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HOW ONE STATE REGULATES HOLDING COMPANIES BY

Regulating Operating Companies

A new and unusual venture in state commission control of the financial practices of parent corporations by safeguarding the resources of the local utilities in the interests of the ratepayers and of the security owners, as expressed in the Harrison Bill.

BY HUGH WHITE
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"ALL who are in favor of a 'New Deal' will say aye." The roar of ayes last November resounded from coast to coast. But while this question was being put to the people from many platforms during the preëlection period, the legislature of Alabama was writing its own answer in so far as the question involved the relations between the light and power, gas, and water companies and the holding companies which own the control of these operating utilities and undertake, generally from remote distances, to manage their affairs.

The statute referred to, known in Alabama legislative archives as the Harrison Bill, came at the time when Mr. Insull and his doings in the utility holding company field were still front-page stuff. People everywhere were looking about for some type of lock to put on the stable door, particularly of those stables from which the horse had already been stolen. Locking the door after the horse is stolen has long been recognized as a futile effort so far as restoring the horse is concerned, but the Alabama legislature thought there might be other stables and other horses, and that perhaps the future might not be without other gentlemen so fond of horses as to take them without license; consequently it was considered worth

while, at least, to try a new fastening on the stable door.

COMING at the time it did, the Harrison Bill attracted widespread interest. Since November, leaders in this field of thought and work, who are trying to find a way to prevent tremendous loss to investors and incalculable injury to the operating utilities, have been asking for copies of this new Alabama statute.

The Harrison Bill is not a mere school-boy effort to solve a problem which he had "read about in the papers" (as Will Rogers would say) or which he had heard some college professors or lawyers discuss in long words and learned phrases. The people of Alabama had left the stable door unlocked and the horse had been stolen, and the Harrison Bill is an effort to prevent the happening again of this sort of thing.

One of the utility companies which operates in Alabama and renders a necessary service to a large part of its people, was owned and controlled by one of these remote holding companies—that is, the holding company owned the common stock of the operating utility which gave the holding company, of course, entire control of the affairs of the Alabama utility. The utility in 1929 was in a reasonably sound financial and operating condition. It had regularly been paying the interest on its outstanding bonds, dividends on its preferred stock, with sufficient surplus remaining to maintain its credit, keep it in position to buy what it needed at advantageous prices, and to meet its obligations to make extensions to serve new customers when occasion arose.

Then came the depression. The utility's customers who used its service in shops, mills, and factories had less demand for the service because their business was being lost. This kept on until men with ordinary prudence and judgment knew the time had come when, if any business of either a public or private nature expected to be able to carry on, it must conserve its cash and diligently protect its credit.

But there was the holding company to consider. The holding company had control of the operating company. The officers in actual charge of the operations and business of the utility which was rendering service in Alabama may have had sense enough to know, and, assuming that they were men of ordinary prudence and judgment, they did know, that the common-sense rules above stated ought to be followed. But they didn't have the control.

MEANTIME the holding company itself was having its troubles. It had assumed the position and the responsibility of parent to help its child. It had had the power in prosperous days and had used it, to help finance its child. But when the dark days came and danger threatened everywhere, and the holding company was no longer able to help its child with money or with credit, the holding company forgot its responsibility as a parent and proceeded to take for itself food which the child had earned by its own efforts, and the child was left to live if it could on its own greatly reduced food supply, and to weather the storm as best it could by its own efforts.

In other words, when the holding company's highly speculative securities, which had been issued without supervision or regulation and without limit as long as the foolish public would buy, began to fall like the stick of a spent rocket, the owner of the holding company needed cash for many purposes, including the fool purpose of trying to support the market on these speculative issues. Business of its operating utility had lost to such an extent there was no longer any prospect of earning dividends on common stock, so, the parent had to look over the child to see what else it had that could be taken.

First, the holding company resorted to this:

It executed its note for several hundreds of thousands of dollars, sent it down to Alabama, and had its child endorse the note and discount it at the banks on the child's credit. The net proceeds of this note went straight up to the holding company and the child did not get a penny's worth of anything out of the transaction.

Next, the holding company ordered the utility in Alabama to issue its short-term notes, maturing in less than two years for over a million dollars, which the Alabama company could do under the law as it was then, without bringing the matter before the state commission. Over a million dollars worth of these notes were issued, and because the financial condition and outlook of the Alabama company was good, the parent company sold these notes readily in the New York market, and took more than one half of the proceeds without any benefit therefrom going to the Alabama utility.

But all this was not enough to satisfy the parent company's needs, so the operating company was required to declare dividends on its common stock when such dividends had not been earned; in this way several hundred thousand dollars more went straight up to the holding company.

WHEN the first evidence of these transactions appeared in the accounts of the Alabama company and thus came to the attention of the public service commission of the state, the commission ordered an investigation and brought out the facts which have been briefly stated above. The investigation also developed that the holding company had been using the officers and employees of the Alabama utility in stock-selling campaigns to dispose of the securities of the holding company. The reader will please bear in mind that these holding company securities were not subject to regulation either by the Federal government or by the state government,

¶ "DIRECTORS *of utility companies should actually perform the duties which their title indicates they are performing. The Harrison Bill sets out . . . a statutory declaration of the nature of their duties; it states how they shall be discharged and it specifies that they must not be relinquished or surrendered to some one else.*"

and as they were listed on some one of the leading stock exchanges, they were exempt from the Blue Sky laws of Alabama, as they would be in practically all the other states of the Union.

It begins to appear now that the people of the country are waking up to the fact that because a security is listed on these stock exchanges affords no assurance that the security rests upon any sound foundation—that it is a stock wisely issued or that it has any reasonable prospect of paying dividends and maintaining the value at which it is sold. It appears, furthermore, that the heads of the New York Stock Exchange now realize there should be further safeguards to the public against such shares.[1]

SHORTLY after the financial activities of this holding company had been brought to light by the state commission, the Alabama legislature met in its 1932 special session. While the press of Alabama had pretty much told the story, the commission felt it to be within the scope of its duty to bring the facts to the attention of the legislature and to recommend remedial legislation within the scope of the state's authority. This was done—and the Harrison Bill, approved November 9, 1932, was enacted.

UNDER the Harrison Bill a "holding company" includes any one who owns or controls as much as ten per cent in number or amount of the outstanding shares of common stock of any utility engaged in any intrastate business in Alabama.

"Common stock" means any and all stock, shares, or interest in any such utility of such nature that the ownership or control of a majority thereof vests the control and management of such utility in the holders or owners thereof.

The scope of the act is broad enough to embrace also what are termed "affiliated interests" which include, among others, every corporation or person with which the utility has a management or service contract.

In Alabama (and usually in the other states) the operating utility has a board of directors made up of men, some of whom live in the state in which the utility renders service, and others of whom reside in remote states, and generally are members also of the board of directors of the holding company. In a few cases, it appears that these local directors who reside in the state where the utility renders service, actually have some share in the management and determination of the policies of the operating company. In Alabama and in some of the other states, it appears that the local officers (that is, officers who reside in the state where the utility renders service) actually have a large authority, if not entire authority in managing the utility's affairs and shaping its policies. However, that these instances are probably exceptions, and the general rule is that the actual control and management of these utilities, not merely so far as financing is

[1] The Associated Press dispatch of January 12, 1933, stated that Mr. Frank Altschul, chairman of the Stock List Committee of the New York Stock Exchange, testifying before the U. S. Senate Stock Market Investigating Committee, said that "drastic legislation to require independent audits of companies seeking to sell their securities to the public" should be enacted.

How the New Statute Restricts the Payment of Common Stock Dividends of a Utility:

"SECTION 6. *No utility engaged in intrastate business in this state shall pay any dividend upon its common stock until:*

"(1) *The utility's earnings and earned surplus are sufficient to declare and pay same after provision is made for reasonable and proper reserves.*

"(2) *The dividend then proposed to be paid upon such common stock can reasonably be declared and paid without impairment of the ability of the utility to perform its duty to render reasonable and adequate service at reasonable rates.*"

concerned but also so far as the determination of when and to what extent common-stock dividends should be declared, generally lies in the holding company and its officers and directors, who are usually far removed from the state where the utility renders service. There is reason to believe that when the holding company has arranged for local resident directors on the board of the operating utility, these local directors are too often intended for ornamental and public relations purposes, rather than for aiding, by their judgment and understanding of local conditions, in the actual direction of the utility's affairs.

It is the view of the Alabama commission that officers and directors of utility companies should actually perform the duties which their title indicates they are performing. The Harrison Bill sets out, in §§ 3 and 4, a statutory declaration of the nature of their duties; it states how they shall be discharged and it specifies that they must not be relinquished or surrendered to some one else.

Sections 3 and 4 are as follows:

"SECTION 3. The officers and directors of every corporation, operating as a utility, shall be deemed to stand in a fiduciary relation to the corporation, and shall discharge the duties of their respective offices or positions in good faith and with that diligence, care, and skill which ordinarily prudent men would exercise under similar circumstances and conditions.

"SECTION 4. The directors of corporations which are utilities engaged in any intrastate business in this state shall not, in any manner, delegate, or temporarily or permanently relinquish or surrender, their duty or obligation."

THE act then requires that, within thirty days after its approval, every Alabama utility should file with the commission true and correct statement of every outstanding agreement between it and any holding company or management company, substantially affecting the financial status or credit of the utility or the management or control of the utility by the holding company or affiliated interests. Thereafter every new agreement or modification of existing agreement of this sort must likewise be filed within thirty days after the making thereof. The commission is given full authority and power to investigate any such agreement and if, after due notice and hearing, the agreement is found to be unjust and

unreasonable, the commission is empowered to make and enter such order as is just and reasonable, relating thereto.

The value of these provisions is so apparent as to make comment unnecessary.

The statute also provides, among other things:

(a) That no Alabama utility shall permit any of its employees to sell or offer for sale the securities of any other corporation during such hours as the employee is engaged to perform any duty of the utility; nor shall any such utility require any employee to purchase any of its securities or those of any other corporations, or to permit deductions from his wages or salary of any sum on any purchase or contract to purchase any security of the utility or of any other corporation.

(b) That no short-term notes shall be issued by any utility without approval of the commission if the proposed note issue, together with all other outstanding notes, exceeds five per centum of the utility's tangible fixed capital as defined in the accounting classification prescribed by the commission.

These provisions are so reasonable, practical, and understandable that they require no explanation.

BUT now we come to where the act begins to hit the holding companies where they live.

Sections 6 and 7 of the statute provide as follows:

"SECTION 6. No utility engaged in intrastate business in this state shall pay any dividend upon its common stock until:

"(1) The utility's earnings and earned surplus are sufficient to declare and pay same after provision is made for reasonable and proper reserves.

"(2) The dividend then proposed to be paid upon such common stock can reasonably be declared and paid without impairment of the ability of the utility to perform its duty to render reasonable and adequate service at reasonable rates.

"If any common-stock dividends are proposed to be declared and paid other than as above provided, the utility shall give the commission at least thirty days' notice in writing of its intention to so declare and pay such dividends.

"SECTION 7. If at any time the commission shall find that the capital of any utility is impaired, the commission may, after due notice, investigation, and hearing, issue an order directing such utility to cease paying dividends on its common stock until reasonable proof has been made to the commission that such impairment has been made good, and that the status of the utility has become such that common-stock dividends may reasonably and properly be paid after the utility has made full compliance with the law and with the commission's rules and regulations pertaining thereto."

WHEN it is borne in mind that this act makes it the duty of the Alabama commission to enforce the provisions of the act and gives the commission full power to make investigations and to issue orders and decrees respecting the matters embraced in the statute and, if the commission finds it justifiable or necessary, to apply to the courts for appropriate relief or action in connection with any such matters, it will be evident that this new law of Alabama is not a mere gesture.

As long as the statute is administered by a commission that is diligent, capable, and alive to its responsibilities, there is no reason why the public interest cannot be reasonably protected in these matters to the extent that the arm of the state can reach. If an irresponsible commission comes into power at any time, and should make orders under this law that are drastic

or unreasonable, the injured party may have relief by applying to the courts of the state, as in the case of all other orders of the commission.

SINCE the provisions of this law have become known to the interested public, a good many questions have been asked concerning the effect of the various provisions, and whether it will not meet the needs for Federal regulation of the holding and management companies. In answering some of these questions, let us first refer to the extent to which the statute deals with the so-called service or management companies which render general, technical, and legal advice and assistance to the various operating utilities within the group of the management company.

Prior to this new statute, the state commission of Alabama had full authority to investigate, consider, and pass upon the reasonableness of any operating expense of the utilities subject to its jurisdiction. The new statute, therefore, does not confer any new authority in this behalf; it simply requires all agreements relating to management fees to be filed promptly after being made, and it gives the commission a specific authority to investigate any such agreement. If, after due notice and hearing, the agreement is found to be unjust and unreasonable, the commission shall make and enter such order as is just and reasonable relating to it. Thus the statute provides specific authority for determination of the reasonableness of these management fee contracts at any time.

If, under its previous general authority, the commission had to wait until it had some pending rate case of the utility in which such management fee would appear as an operating cost before the management fee contract could be inquired into and determined as to its reasonableness, unreasonable management fees might be assessed and paid lawfully by the utility for several years during which no such rate case was pending. In some cases the amount of these management fees is substantial; in such cases the ratepayers should not be burdened with payment of unreasonable amounts over a period of years when there is no rate case of the utility pending before the commission. In fact, the ratepayers should be kept free from any such burden all the time, as far as this is possible.

BUT it is not the ratepayer alone who is interested in the amount of these management fees. The larger the amount of this operating cost, or any other operating cost, the less net income will remain with which to

¶ "A CAREFUL *analysis of this statute shows that the regulation provided therein is all based upon the admitted authority of the state of Alabama to regulate the operating company within the state. If such regulation in any way reaches to the holding company or the management company, it is indirectly and results only from the regulation directly exercised over the operating company.*"

insure continuous payment of dividends upon the utility's preferred stock in which the utility's customers have invested their savings. Particularly in times like the present, when there has been such a great shrinkage in such net income as to threaten payment of dividends on the preferred stock of even the strongest utilities, does the amount paid as management fees become a matter of real interest to the holders of preferred stock.

For the past several years, these managerial services have come to be provided more and more by a corporation separate from the holding company; they are known as service or management companies. The Alabama statute recognizes the existence of these companies and the purposes for which they are organized. As a rule the service or management company is closely affiliated with the holding company, both as to officers and directors.

Concerning the provisions of this law respecting the holding company's relations with its operating utility, the question has been asked if §§ 3 and 4 of the act (quoted in full on page 383) will prevent the directors of the operating company from entering into management contracts or from allowing any other person to manage the companies; also, whether it is the intention of these sections that the operating company must be managed by local directors.

These provisions in no way prevent or interfere with the directors of the operating companies from entering into management contracts or from providing for such personnel management of the operating company as the judgment of such directors dictates. The statute does not contemplate the state's entering into such management directly by its agency, the state commission. It has been settled by the Supreme Court of the United States that the state cannot manage under the guise of regulation.

Do these provisions of the statute mean that the operating company must be managed entirely by the local directors? This is not a reasonable construction of the statute; to so construe it would bring it very close to violation of the well-settled rule of the courts. Sections 3 and 4 can hardly be expressed in plainer language than that in which they are written. The officers and directors of the utility corporation stand in a trust relation and these provisions simply mean that they should in good faith perform the duties which are reasonably within the scope of such offices and not be mere ornaments or figureheads to cause the local public to have the feeling and confidence that such men are actually officers and directors, fully acquainted with the operations and the affairs of the company and urging in good faith the views which their consciences and judgment dictate as reasonable, right, and proper views respecting the policies and management of the utility's business, when in fact, this is not the case.

Section 6 of the act, after all, is no more than a statutory command to the directors of the operating utility to so regulate payment of common stock dividends as not to impair the soundness of the utility or weaken it for the discharge of its continuing duties. There is not a sound banker or busi-

¶ "THE *new statute does not confer any new authority to pass upon the reasonableness of operating expense; it simply requires all agreements relating to management fees to be filed promptly after being made, and it gives the commission a specific authority to investigate any such agreement.*"

ness man in the country who will take issue with this statement.

THESE reasonable restrictions upon the common-stock dividends are no more than a statutory reminder to the utility's board of directors that they occupy a trust relation and that they must live up to it. The people of the country who have bought the utility's bonds and its preferred stock have furnished by far most of the money to make the utility plant and enterprise possible. It is probably rare that the owners of the common stock have furnished as much as twenty per cent of the entire capital invested in a utility and its business.

Those who own the common stock know that in a business enterprise made possible through (a) issue and sale of its bonds; (b) issue and sale of its preferred stock, and (c) issue of its common stock, the relative obligation is that the bondholder, who takes a low rate of interest on his investment is entitled to have his investment kept sound and his interest paid promptly. After him comes the holder of the preferred stock, whose dividends are usually agreed to be cumulative and whose shares represent investment only, who plays no part in the current management of the business, and who is entitled to have his investment likewise kept sound. They naturally expect the income of the business to be so administered that they may expect payment of dividends from year to year; the holder of the common stock must sit at the third table and receive his dividends, if any, after provision is made for the others.

While the Alabama statute nowhere mentions those "upstream loans" which have created some offensive cess-pools in the utility field during the past few years, the provisions of the statute, coupled with previously existing law, will enable the commission to prevent such scandalous practices.

IS this new Alabama law a well-considered and reasonable approach to the utility holding company problem?

The Alabama commission thinks it is.

A few months prior to the enactment of this statute, the Alabama commission, under its general authority, asserted the power of prohibiting the utilities from paying further common-stock dividends until they had first made affirmative proof before the commission that reasonable and proper reserves had first been set aside. A number of holders of preferred stock of the utilities in Alabama reported to the commission that the price of such securities went up from ten to twenty points in the local market when the commission's order was

issued to all Alabama utilities. The statute does little more than give express authority to the state public service commission to do what it had already asserted under its general authority.

What real need is there for regulation of the holding company anyway, when the primary duty of regulation is to protect the ratepayer?

True, the primary duty of regulation is to protect the ratepayer. But it must be remembered that every state commission which has reasonably comprehensive authority also has the authority and responsibility to supervise and regulate the security issues of the operating companies. It frequently happens that the money invested by the people of a state in preferred shares of a utility is a larger amount than that which has been invested by the owners of the common stock. Unless the state commission has power to continue a reasonable protection to the purchasers of this preferred stock, the mere authority to supervise and regulate the issuance of such shares is little more than an idle and deceptive gesture. It may happen and often does happen that at the time the state commission authorizes the issuance of preferred stock, the utility is in a sound condition, well managed both as to its financing and operation, and the preferred stock issue is not only warranted, but constitutes a good investment. But if the holding company is to be left free and unrestrained in its dealings with the operating company, we may expect repetitions of reckless, unwise, and wrongful practices which have only too often come to light during the past few years.

It has been asked, if this Alabama statute is constitutional and is reasonably administered, will there be any need for Federal regulation of holding companies? If so, what is the need, and to what extent should such Federal regulation go?

The answer to this query involves the matter of the limited authority of the state as well as matters of practical nature. A careful analysis of this statute shows that the regulation provided therein is all based upon the admitted authority of the state of Alabama to regulate the operating company within the state. If such regulation in any way reaches to the holding company or the management company, it is indirectly and results only from the regulation directly exercised over the operating company.

It must be evident to everybody that tremendous loss and injury have been inflicted upon the people of the country during the last few years, because some of the holding companies have been guilty of reckless issuance of their securities—specifically companies which are purely holding companies and which are not *both* holding and operating companies. While all securities have gone down during this depression, none that have been issued by companies of any standing, have gone so far as the issues of purely holding companies. True, the holding companies have not all erred to the same extent, nor have they all been recklessly managed; some of them which have had reasonable, conservative management will probably weather the storm, even though the market on their own securities today may be as low as one tenth or one twentieth what it was in 1928

and in the spring of 1929. The issues of these holding companies generally are based almost entirely upon the common-stock equities owned in the operating utilities throughout the country. When the holding company issues go down to such a low point, the confidence of the investing public is greatly shaken. The public does not always distinguish between a holding company and an operating utility. It is manifest, however, that it will take some time for the public to regain enough confidence in utility securities to enable the operating companies in the future to market their own securities upon such a basis as to provide money at low cost. And money at low cost is fundamentally necessary.

THE parent holding company for years has assumed the responsibility of financial guardian of the operating company. It would seem to require no argument that unless the parent itself is kept in a financially strong position, it will not only be unable to aid its child but will, as experience has shown some have done, be taking the child's food for its own sustenance.

Certainly the holding company should be regulated—at least its security issues should be regulated. This cannot be done by the states under their limited constitutional powers. Some commissioners have suggested that it might be done by the various state Blue Sky commissions. If Alabama sought to rely upon this method, it would be undertaking to see that every state in the Union provided the necessary Blue Sky law, made reasonable provisions for its enforcement, and then reasonably enforced such law. This is not a practical method. The Federal government should regulate the security issues of all utility holding companies. The Federal government's authority should, indeed, be largely limited to this one object. When the Federal government exercises the authority of regulating holding company securities, it will not only have the right, but if it does the job efficiently, it will be necessary for it to inquire into the entire business of the holding company. Whenever the light is turned upon the affairs of a company whose house is not in order, the disorder stands out in bold relief and will be remedied.

The Constitution of the United States still stands and all the many decisions of our Supreme Court, which have set reasonable boundaries upon regulation, whether exercised by Federal or state agencies. If the Federal regulatory body gets arbitrary, there will be effective remedies.

PERSONALLY, I am opposed to extension of Federal regulation unless it is necessary; when it is necessary, I would limit the regulation as far as possible. But after all, the Federal government is our government, just as the state government is ours; we have a Federal Constitution as we have state Constitutions, and I am wholly unable to see how any legitimate business under reasonable regulation should be hampered in carrying on its prescribed destinies.

The Alabama statute here outlined is merely an effort to put the "New Deal" into practice. And that, after all, is simply a "Square Deal."

A Regulatory Experiment

THAT WORKED TOO WELL

Why the sliding-scale plan of utility rate making, as developed in England fifty years ago and tried out recently at our National Capital, worked so well and smoothly for both ratepayers and the company that it had to be modified.

By AARON HARDY ULM

CAN a method of regulating utility rates operate too well? Does the American temperament require that turmoil be an essential attribute of regulation?

Those are not foolish questions. Let us inquire into them with particular reference to a case that was reported in this publication a little more than two years ago,[1] and which described the unique sliding-scale rate basis established in the nation's capital. That method of rate making was then operating so smoothly that both queries above could have been answered in the negative. But now there is a sequel to the story—and the sequel implies affirmative answers to the questions at the top of this column.

[1] "A Unique Experiment in Rate Regulation," in PUBLIC UTILITIES FORTNIGHTLY, November 27, 1930.

Two years ago this sliding-scale plan of rate making apparently was working as nearly perfectly as any could work. Without controversy, without friction, almost without "hearings," the plan had produced extraordinary reductions in rates for services supplied by the local power company. The rates had fallen to the lowest level of any prevailing under similar conditions in the United States, and the level was still descending. Of all concerned with the experiment, the regulated company gloried most in those reductions; it not only freely acquiesced in them but struggled to bring them about. For every lowering of rates proclaimed a high degree of prosperity for itself. Two years ago this commentator truthfully reported:

"Nobody complains of the com-

pany's prosperity, for as its revenues increase the rates go down still further."

Yet the ink was scarcely dry on the printing of those words before developments took a provocative turn. Complaint was made. The complaint did not concern the rates *per se,* nor even the efficiency of the method of regulating those rates; indeed, all of those who complained apotheosized the method of rate making.

The complaint was that the utility company was too prosperous!

Two years of turbulent controversy followed, ending in a compromise by which, to be sure, the main structure of the regulatory method was preserved, but which changed the rate-making structure in perhaps one vital particular. The doors were left widely open for complaining, controversy, and turmoil.

Formerly all of that controversy had been practically excluded by certain attributes, probably of extra-legal character, which attached to the automatic nature of the regulatory method in force. The method revolved around a sliding-scale or profits-sharing device that was invented in England over a half century ago and has since been used extensively there, chiefly in the field of illuminating gas utilities. The device was imported into this country early in the present century. The most noteworthy use of it prior to the instance here considered was in Boston. Experiments with the device were attracting most of the rather meagre attention given them in this country when the United States Congress, in 1913, adopted a law for the regulation of public utilities in the District of Columbia. The public utilities commission thus set up in Washington was given power to make use of sliding-scale systems of rates' control.

But the power seems to have been long overlooked—as has been, generally speaking, the sliding-scale method of rates regulation in the United States. Ten years after beginning operations, the District of Columbia commission still was wrestling with obdurate obstacles in the way of its achieving control of electric current rates by the standard American method of voluminous inquiries, comprehensive "findings," rigid decrees, and tortuous litigation. The Potomac Electric Power Company disputed the commission's findings as to the value of its property and refused to limit its charges to rates based on those findings. After a decade of costly controversy, the only ponderable results were a mountainous mass of litigation and an impounded fund of about $6,000,000. That sum represented the difference between rates prescribed by the commission and the actual charges made by the company during the long period of strife.

Then one day a young United States Army engineer, Major W. E. R. Covell, an assistant to the commission, pointed to the section of law authorizing sliding-scale rates and, in substance, said:

"Here's the key to this electric rates muddle. Agree with the company that it may earn all it can and keep all it earns provided it lets rates be reduced in line with its earnings above an agreed-on rate of base return to it. Thus it will be to the advantage of the company to struggle all the time for lower rates."

The commission and the company went into a huddle, out of which came a compromise arrangement in line with the engineer assistant's suggestion.

One half of the impounded fund was rebated to consumers, the company retaining the other half. A rate, or valution, base was agreed on, the same to rise in line with further investments in facilities. There was a like continuing arrangement regarding a depreciation or retirement fund, together with a key rate of return to the company. The latter was 7½ per cent a year of the rate base. Whenever earnings for a year were above that rate of return, it was agreed, rates of charges would be automatically reduced in extents envisaging a sharing of one half of the excess with consumers during the succeeding year, and so on from year to year.

THE power company's charges for electric current had revolved around a primary household rate of 10 cents a kilowatt hour. The primary rate was reduced to 7½ cents a kilowatt hour, and other rates were lowered correspondingly, for the first year under the sliding-scale plan. From then on rate revising was mostly a matter of mathematics at the end of each year, as was also the task of keeping track of the rate base and the retirement fund.

What happened?

During the first year under the plan, the company's sales of current increased 18 per cent. The company's net return was over 9 per cent of the rate base. So at the beginning of the next year, its rates of charges were reduced about 7½ per cent. The same occurred substantially from year to year, with recurring scalings of rates that, in the aggregate, approximated a 50 per cent lowering, in a period of six years, of the rate level anteceding the plan. The company's sales of current almost doubled, and the costs per unit of production and distribution were greatly reduced. The authorities attributed at least one half of all this to the workings of the sliding-scale plan.

There was a prospect at that time—a prospect not yet entirely dissipated—that the rates for current ultimately would go to an almost unbelievably low level for energy generated from coal, mined at a carrying distance of several hundred miles from the producing plants, and distributed in a nonindustrial area. Of course, the process of reduction would inevitably produce a level of rates that could not yield a return above the base rate of allowed earnings. But at the end of six years the company had earned $4,000,000 to $5,000,000, or over 2 per cent above that base rate of allowed return, and it seemed probable that those "excess" earnings would be considerably increased.

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Hence the complaint about the company's prosperity.

THE complaint did not come directly from consumers, nor was it initiated by the regulatory body which sponsored the sliding-scale plan. Its chief source was from an office that was created after the sliding-scale plan was put into effect—the office of "Public Counsel," to which an energetic and skillful young lawyer had been appointed. The record of subsequent proceedings is distinguished by the fact that it embodies no customary allegation of unjust and unreasonable rates being charged for electric current. The nub of the complaint as made lies in the allegation that the local power company was making too much money.

Under most rulings as to earnings and rates, the claim was quite well founded in fact. But the underlying data indicated that the recurringly impressive reductions in rates were just as much a product of the company's high degree of sustained prosperity, under the regulatory plan, as that that prosperity was a product of the rates. Succinctly, if the company had not prospered so much the rates could not have gone down so rapidly and so far.

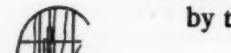
Thus the case raises some searching questions. One of them is: Is the prime object of utility regulation to curtail profits or to produce low rates? Another is: Why do frictionless regulatory methods, like that of the sliding-scale system, prosper so little in the United States while doing well in some other countries?

Some authorities reply that the reason is that such methods are not adaptable to usual American conditions. Possibly the American temperament demands more or less excitement, as a kind of popular entertainment, in public regulation.

AN important aspect of this sliding-scale plan of rate making was a seeming assurance of perpetuity so long as there was no radical change in conditions which affected its operations. The plan was embodied in a "consent decree" that brought an end to all preceding litigation. Thus it partook of a contract made with the approval and given the imprimatur of a court. It took no cognizance of a time element with reference to the plan as a whole and contained no provision for changing the plan. Therefore, a long-time view could be taken in the administering of the plan.

When the matter became a subject of litigation, it was contended by the complainants that the public utilities commission had no power to thus contract away its authority and duty to revise electric current rates whenever and however there were good reasons, though unrelated to the sliding-scale arrangement, for so doing. In so far as this question was passed on judicially, the contention was upheld by the courts; likewise did the courts sustain a new sliding-scale arrangement that was decreed by the commission without the consent and over the protest of the company. The essence of the new arrangement is a curtailment of the possibility that the company may again enjoy a degree of prosperity far above that allowed by the base rate of return.

Before the issue as to the validity of the new sliding scale went far



Two Pertinent Questions that Are Raised by the Sliding-scale Rate Experiment:

"IS *the prime object of utility regulation to curtail profits or to produce low rates?*

"WHY *do frictionless regulatory methods, like that of the sliding-scale system, prosper so little in the United States, and prosper so much in other countries?*"

into the courts, an agreement was arrived at by the commission and the company. The company conceded the right of the commission to deal with the sliding scale as it might deal with any schedule of rates. Technically, the commission now has the undisputed right to disrupt or discard the sliding-scale system when it pleases, though any very abrupt action by it would be subject, no doubt, to the test of reasonableness. The aspects of perpetuity and of insulation from captious attack no longer adhere to the plan.

THE new agreement preserves the old arrangement so far as the rate base and retirement fund are concerned. The base rate of return to the company is reduced to 7 per cent. When the company's net earnings on its rate base exceeds that rate of return during a twelve months' period, its rates of charges for current are to be reduced in extents envisaging immediate rebating of one half of the amount of earnings above 7 and not above 8¼ per cent, and 60 per cent of any earnings above 8¼ and not above 9 per cent, and 75 per cent of all above 9 per cent. If earnings during any period of two consecutive years fall below 6¾ per cent, or during any single period of twelve months below 6¼ per cent, rates are to be increased in extents to produce a return of 7 per cent. The last provision is only slightly less favorable to the company than the one it supplants.

UNDER the new arrangement, the speed of the inevitable workings of the plan toward a rock-bottom level of rates will be about doubled. Under the old arrangement, for example, rates for 1933 would have been put on a level that envisaged a "sharing" with consumers of $382,000 or double that amount of "excess" profits made by the company in 1932. Under the new arrangement $562,000 will be the amount "shared." Even should consumption increase and should the per unit costs of production and distribution of energy sold decline in the average extents they did under the old arrangement, the company's earnings above the base rate of return cannot be much more than half as large in 1933 as they were during the average year of the previous period.

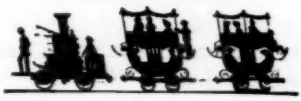
THE inevitable rock-bottom level of rates will be reached sooner,

of course, but will it be as low and as sustainable as it might be under the slower and more cautious approach allowed by the original arrangement? Then, when rock is reached, will the plan stand up without the psychological support of recurring reductions of rates, or in spite of possible increases? When that time comes, will the management of the company be as eager as it formerly was to increase operating efficiency and thus bring about lower rates? Will the abandonment of the contractual aspect of the arrangement and the color of perpetuity adhering thereto give an inviting appearance to the doors thus thrown open for complaints and consequent turmoil at any time regarding the plan? And will this lead the company to curb its long-time planning?

These questions bear importantly on the new period, now starting, of probably the most interesting and significant experiment with the sliding-scale method of regulating electric current rates that has been attempted in the United States.

The first period was brought to an end by the fact that during six years of frictionless, automatic operating of the experiment, the method worked too well. Will the second period be brought to an end by the failure—which is probable—of the experiment to work as auspiciously in it as it did in the first period?

In a following issue, MASON M. PATRICK, *Chairman of the Public Utilities Commission of the District of Columbia, will describe the workings of the sliding-scale rate plan, and tell the reasons for the recent changes and the purpose which it seeks to attain.*



According to the Newspapers—

SINCE 1901 the government-owned and government-operated railroads of Australia have lost $330,000,000.

* *

THE production of electricity by water power in the United States during 1932 amounted to 41 per cent of the total production, according to the latest report of the Department of the Interior.

* *

THE city council of a large municipality recently instructed its attorney to bring a proceeding before the state public utility commission to require the restoration of pre-war electric rates. Then it discovered that—if the petition were granted—the average rate paid by the residence consumer would advance 90 per cent. The proceedings were dropped.

* *

THIRTY American colleges and universities, whose investments were recently surveyed, own more public utility bonds than bonds of any other kind. The list reveals the following holdings:

Public utility bonds	$95,000,000
Railroad bonds	87,000,000
Industrial bonds	44,000,000
U. S. government bonds	17,000,000
Foreign bonds	13,000,000
Municipal bonds	5,000,000
Mortgage bonds	4,000,000

THE ACTUAL AND THE FANCIED

Effects of a Utility's Financial Policies upon Utility Rates

What the depression has and has not revealed in the conflict of interest between the ratepayer and the investor.

By JAMES C. De LONG

A WALL Street broker was conducting a personal sight-seeing tour of New York for the benefit of one of his out-of-town customers. From the Battery numerous yachts were seen tossing at anchor in the Hudson. The enthusiastic host began to identify them.

"That large white one is broker Smith's; this black steamer is broker Jones'; that one, with the two masts, is broker Brown's," he rambled on. His guest waited expectantly until he had concluded, then turning to him with a puzzled air he asked:

"And where are the customers' yachts?"

THE implications of this question have been bothering a good many people in this country recently, particularly those who have fallen victim to our calamitous markets. Public opinion appears to be veering around to the belief that the financial dice are loaded and that fortuitous circumstances or investor credulity have played a smaller part in the financial catastrophe than deliberate manipulation of security prices by members of the stock brokerage fraternity.

The direct liaison between the utility consumers on the one hand, and the management of many of our great utilities who are suspiciously close to Wall Street, on the other, have involved the industry in a controversy which is clearly the consequence of the public's recent financial experiences. It appears a Machiavellian plot is afoot to exact tribute from utility consumers through the medium of the security markets.

It is specifically alleged that the costs of utility service to consumers are influenced by market prices of utility securities.

Such a charge, of course, implies that a free market for utility stocks and bonds does not exist and that such

issues have been inflated beyond their intrinsic values by artificial methods employed by the utility companies or their fiscal agents. The critics have found this difficult to prove; usually exploration of the subject leads to wholly extraneous channels which end in the sphere of speculative economics. Perhaps if the consumer's senses had not been whetted by adversity, the Wall Street odor hovering about his gas and light meters would never have been noticed. But there it is, and what are you going to do about it? You may argue that the consumer is the victim of hallucinations brought on by an over-dose of Wall Street speculation; yet the newspapers continue to uncover examples of the financial wizardry of some of our utility magnates.

THE truth of the matter is that the collapse of 1929 caught the utility industry up to its knees in ticker tape and the charges of market manipulation and financial skulduggery in general usually have sufficient basis in fact to call for more than a shrug or a pooh-pooh denial from utility spokesmen.

Every discussion of this question should begin with the frank recognition by both parties to the argument that, in the final analysis, the utility security price structure rests solidly upon the utility rate base.

Rates are the primary fount of earnings. Earnings in turn determine the investment worth of securities and their market appraisal. If rates are fixed so low as to prove confiscatory, the creditors and owners of the business must suffer partial or total loss of investments. If the rates are too high, of course, the investing public profits at the expense of the ratepayer.

It should be made clear that during the past three years of diminishing utility earnings, there has been no apparent disposition on the part of the utility companies to boost rates or to check the normal down-trend for the sake of protecting capital invested in the business or maintaining market prices for their securities; during the period from September 1, 1929, to December 31, 1932, the total market value of all utility stocks and bonds listed on the New York Stock Exchange declined from approximately nineteen billion dollars to nine and one-half billion dollars.

This represents a loss to investors in utility securities alone of an amount nearly equal to the sum owed this country by the governments of Europe.

IT is a matter of interest that of all the criticism which has been directed at the defunct utility companies, not a single charge is heard that consumers have been subjected to excessive rates by these companies or that standards of service were not the best possible. Deflection of utility management from the straight line of utility operation to the channels of high finance has penalized the investing public, not the consumer.

ONE great difficulty which is encountered in attempting to reconcile conflicting views on this subject is the failure of the utility consumer to appreciate fully the inherent rights, and the industry's dependence upon, the investing public.

The consumers, by and large, care not a tinker's dam for that group of money lenders who finance the utility business. The investor's function in the simple matter of meter reading and rendering of the monthly bill is too remote for the consumer's mind to grasp. Experience has taught him that the utility company's stocks and bonds can be reduced to mere scraps of paper and, to all intent and purpose, he continues to receive the same service as before.

But it is not as simple as that. Unlike many industries which generate sufficient surplus funds to provide for costs of normal development, the utility industry requires capital considerably in excess of that supplied from current earnings. This is because it is restricted to a limited rate of return on investment and because it is still in the virile stage of development. Progress of the industry, over the long-term future, will be determined in no small measure by the efficiency of its capital-securing machinery. If this is to function smoothly and adequately, certain criteria, evolved to inspire the investing public's confidence, must be rigidly adhered to.

Protecting the credit standing of the industry to insure a steady flow of funds into the business and constant effort to reduce the costs of such capital are as vital to its future as maintenance of high standards of service and reduction in costs to consumers. The former task is not an easy one. The utilities are forced to compete in the open market with other borrowers, for their capital transfusions and the measure of safety offered largely determines the price which they must pay. The importance of this duty has been summarized by Mr. George B. Cortelyou, president of the Edison Electric Institute; in a recent message he said:

> "One of the main pillars of the utility structure is the investor. His support of the industry is based on confidence, but his confidence is not lightly bestowed—it is a plant of slow growth. It was no small thing for the utilities to win the approval of their army of investors, but having won it, it is their duty to protect and safeguard it by every means in their power as one of the indispensable requisites of efficient and economical service."

If the industry had been less conscious of its duty to the investing public, it is probable that rate reductions would have come about much more slowly and to a more limited extent than has been the case. Indeed, there has been a parallel development in the cost-trend of utility capital and utility rates. No longer ago than 1921, the average price of

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utility capital was[1] 7.3 per cent. In 1931 this had been reduced to an average of 4.7 per cent. When it is realized that par value of bond and preferred stock capitalization of the industry is in the neighborhood of twenty billion dollars and that new capital and refunding requirements approximate two billion dollars annually, this reduction in the price of new capital to the industry, amounting to about 35 per cent, during the short space of ten years, is of no small significance.

The industry thus has a legitimate financial function, the proper execution of which is directly in the interest of the consumer. If this function were more widely appreciated by consumers and a few lessons were learned about the basic laws which govern the flow of new capital, some of our soap-box agitators might find a less sympathetic audience in utility consumers.

Some of those in charge of the financial destinies of the utilities have made mistakes, of course. Either by design, or because some of these errors cannot be readily corrected, certain policies which are open to criticism, still persist. One of them has resulted from the tendency to coddle common stockholders. This group of security owners are the real proprietors of the business and their requirements include safety for funds invested and something in the way of current return, usually more than might reasonably be expected.

Unless a utility management is extremely alert, the clamor of militant stockholders is likely to result—indeed, it has resulted in certain instances—in steps which are not consistent with the best interests of the consumers. Utility officers are merely hired men. Their employers, the common stockholders, must be assured, in one way or another, that they are receiving, or will ultimately receive, larger returns on their commitments than were their funds placed in other situations. A disgruntled stockholder can give a utility officer more sleepless nights than a dozen dissatisfied consumers. The spectre of a proxy contest crops out in every stockholder's complaint.

In an attempt to maintain stockholders' good-will, utility managements have been known to resort to expedients which, on their face, were not in the best interests of the business or consumer. There have been examples of companies employing unsound bookkeeping methods in an effort to prop up sagging earnings and for the purpose of increasing dividends when general conditions dictated conservatism in cash outlays. It is surprising to note the number of companies which have drastically pared depreciation charges recently, although there were no indications that allowances of former years were too liberal. The surpluses of many operating companies have been tapped to improve the earnings of the parent companies.

It can be argued with some logic that such practices, whether temporary or not, do result in bolstering up security prices and that money, in such cases, does find its way to stockholders which should be used in the business or passed on to consumers in the form of lower rates.

[1] *Moody's Investors Service.*

The Utilities Have Not Sought to Boost Rates During the Period of Falling Revenue

"DURING the past three years of diminishing utility earnings, there has been no apparent disposition on the part of the utility companies to boost rates or to check the normal down-trend for the sake of protecting capital invested in the business or maintaining market prices for their securities."

Unfortunately, such practices are not generally recognized or condemned by the average stockholder. The vast majority of American stockholders casually assume the responsibilities of corporate ownership. They are disposed to applaud immediate results of questionable management policies, through ignorance or greed, rather than encourage conservative building. They are inclined to measure managerial ability by the size of dividends and the frequency of melons (such as extras and the like), and this standard has placed a severe strain upon managerial ethics in meeting these demands and still conducting the business along sound lines. In the utility field, such a standard laid down by owners and recognized by managers must influence both rate structure and service.

FUNDAMENTAL policies followed by utility managements in reconciling the rights of stockholders and consumers differ greatly among companies in the field. Perhaps the most forward looking plan, and one which has received a great deal of publicity during the past few years, has been worked out by the management of the American Telephone and Telegraph Company. This policy was outlined by President Walter S. Gifford, in an address delivered before the 1927 convention of the National Association of Railroad and Utilities Commissioners in Dallas, Texas, and repeated in annual statements of the company since that time. This policy is summed up in Mr. Gifford's statement:

> "It follows that there is not only no incentive, but it would be contrary to sound policy for the management to earn speculative or large profits for distribution as 'melons' or extra dividends. On the other hand, payment to stockholders limited to reasonable regular dividends with their right, as the business requires new money from time to time, to make further investments on favorable terms, are in the interests of both the telephone users and of the stockholders.
>
> "Earnings must be sufficient to assure the best possible telephone service at all times and to assure the continued financial integrity of the business. Earnings that are less than adequate must result in telephone service that is something less than is the best possible. Earnings in excess of these requirements must either be spent for the enlargement and improvement of the service furnished or the rates charged for the service must be reduced. This is fundamental in the policy of the management."

The American Telephone and Telegraph Company has probably come closer to a solution of the problem than other companies in the utility

field. Outwardly at least, the company has found the desirable middle ground which it can traverse to the mutual advantage of its 700,000 stockholders and 14,000,000 patrons. In 1929, when melons, extras and increased dividends were being voted by many over-optimistic managements, American Telephone paid its regular $9 annual rate, although $12.67 per common share was available from earnings in that year for distribution. As a possible result of this policy, the regular disbursement has been continued throughout the depression. By laying down a policy which recognizes the fundamental rights of both stockholders and consumers, and through the management's efforts to educate their stockholders in the main characteristics of the business, they are fully aware of their joint responsibilities and what they are reasonably entitled to in the way of return on investment. A commendable stockholder-consumer liaison has thus been established, and in accomplishing this, the management of the company appears to have fulfilled a primary function of corporate administration.

ONE of the more recent major developments in the sphere of public utility management and one which has profoundly influenced management policies has been the application of the investment trust idea to the utility industry. These units, in the main, have had their inception behind the closed doors of bankers, and their corporate aims and requirements are not always consistent with the best interests of the operating and holding companies with which they become identified through security ownership.

Not infrequently, investment trusts have been organized by the managements themselves, as a measure of self-defense. Thus was inspired the formation of Insull Utilities Investments, Inc., and Corporation Securities of Chicago, the two investment units of Mr. Samuel Insull. Others have received the tacit sanction of utility managements and practically all of those units which specialize in utility securities have utility representatives on their boards. Where this arrangement exists, the financial policies of the constituent companies frequently bear the earmarks of the trust's financial needs.

The portfolios of the investment trusts were built up during the period of higher market prices. As quoted value of their common stocks is usually determined by income and liquidating value, the latter in turn being governed by market prices of underlying securities, the trust's officers are inclined to cast a cold eye upon any policies advanced by the constituent units which might tend to depress market prices of their securities or limit the trust's income.

Capital structures and sources of income of the investment trusts are such that they have fared extremely badly during the past three years. Depreciation in the market value of assets has, in many cases, completely wiped out all common stock equity, and greatly limited that available for the senior issues. The pressing problem for many of these units has been to avoid drastic capital readjustment or receivership by continuing interest payments on their bonds and meeting current expenses. As primary source

of income is dividends from common stock holdings, the policy of scaled-down payments results in bringing the investment units closer to the brink of insolvency. Their distress signals have not been ignored by those companies whose securities are held in substantial amounts.

LET us take as a specific example of the investment trust's influence upon an operating company whose securities it holds—the case of the Insull Utilities Investments, Inc., which was conducted along the conventional investment trust lines until April 16, 1932. The largest single investments of the company consisted of common stocks of the Middle West Utilities, Peoples Gas, Light & Coke, Commonwealth Edison, and Public Service of Northern Illinois. In 1931, approximately 75 per cent of the total income of the company was derived from dividends on its common-stock holdings. This amounted to $9,600,000 in that year. Now then, interest and preferred dividend requirements of the company in 1931 amounted to, roughly, $9,000,000, just short of that received in the form of dividend income. At the end of the year, the company had $53,000,000 in short-term loans which it hoped to refund, so that it could not jeopardize its credit standing by omitting preferred dividends. Its dividend income was thus vital to future safety.

The majority of companies whose stocks were held by the trust reported lower incomes in 1931 than in the previous year. Despite this, all maintained their regular common-stock dividends throughout the year, indeed, throughout the first half of 1932. While it is possible this liberal dividend policy was justified, it is significant that at the next scheduled dividend meetings of Commonwealth Edison, Peoples Gas, Light & Coke, and Public Service of Northern Illinois following the collapse of the trust, dividends on the common stocks of all three companies were drastically reduced, the reduction resulting in aggregate savings for the three companies, equal to $10,063,000 per year.

What happened to the financial condition of these four companies during the year 1931? As of December 31, 1930, the group reported a net working capital of $33,186,000. Twelve months later (December 31, 1931) this had been converted into a working capital deficit of $30,874,000.

BUT, it is asked, how did this development affect the interest of the Chicago consumer?

Let us take the example of Commonwealth Edison. In 1923 the company issued long-term bonds with interest at the annual rate of 5 per cent. Cost of new capital to this company steadily declined during the ensuing years as indicated by the fact that in

¶ "No *categorical reply can be made to the charge that utility security prices influence rates. It is safe to assert that in the vast majority of cases, no relationship whatsoever exists.*"

March, 1931, the company sold $85,000,000 of its bonds to the public bearing interest at the rate of 4 per cent per annum. In August, 1932, the company issued $18,000,000 of its series G open mortgage bonds, secured equally with the former issues. On this issue it was required to pay 5½ per cent interest per annum. This was $15,000 more per year per million dollars of bonds than the company paid one year earlier. While this higher cost of new capital to the company may be ascribed in part to less favorable conditions in the bond market and the coyness of the investing public towards all securities bearing the Insull stamp, the less favorable credit risk of the company was a paramount factor. This temporary impairment of credit standing will cost the company $8,100,000 in higher interest charges during the life of the bonds.

The interest of the consumer now becomes apparent.

In fairness to a large number of investment trusts, it should be stated that not all exercise a malignant influence upon constituent companies as might be inferred from previous paragraphs. Many of the more conservatively capitalized companies have been able to steam along during the depression without sending up S. O. S. signals each time a change in financial policy is considered by underlying companies. Perhaps the best example of this is the United Corporation which has a substantial minority interest in several of the larger operating and holding companies in the East. Although the company's income has been greatly curtailed as a result of dividend reductions and omissions on securities held, it continues to earn and pay 40 cents per share per annum on its common stock, while preferred dividends are being covered nearly two times. The company's board is made up of officers and directors of its constituent units and a community of interest has resulted which serves a highly constructive purpose.

No categorical reply can be made to the charge that utility security prices influence rates. It is safe to assert that in the vast majority of cases, no relationship whatsoever exists. But as is usually the case, the industry at large is called to task for the malfactions of a few of its members. In its broader aspects, the question is a purely academic one, yet the conditions which have led up to the charge should be of concern to every member of the industry.

A clearing of the economic storm clouds and restoration of Wall Street to the good graces of the speculatively minded public should go far in patching up utility-stockholder differences. This should not be relied upon as a permanent solution of the problem. The great body of utility stockholders have little real knowledge of the giant business which they own. Their present demands upon management are not always consistent with the best interests of the utility consumers.

Consumers, on the other hand, must be made to realize, by some method yet to be determined, that legitimate financial operations of the utility companies are directly in the interest of improved service and lower rates. These are tasks that challenge every utility management.

The High Cost of Paternalistic Government to the Taxpayer

The tragic cost of experimental invasions into the field of private industry in general and into the field of transportation in particular—and a Three-Part Plan for the restoration of the damage done.

By L. A. DOWNS
PRESIDENT, ILLINOIS CENTRAL SYSTEM

GOVERNMENT in the United States has departed from the wise and prudent course that was charted by the founders of the republic, and in so doing it has heaped a crushing burden of taxation upon the American people.

This tax burden is one of the stumbling blocks in the way of business recovery. It weighs heavily upon agriculture. It robs industry of its profits. It impairs productive ability in every field of enterprise. It destroys the incentive to earn, to invest, to build. Directly or indirectly it lays a heavy hand upon every family, every wage earner, every business man, every corporation, and every investor.

WITHIN less than two decades the annual expenditures of our Federal, state, and local governments have increased from around $3,000,000,000 to around $15,000,000,000.

Today government is costing more than $400 a year for every family in the United States. We are confronted with the impossible situation of being compelled to turn over one third of our national income to the tax collectors.

The impression quite generally prevails that this enormous tax burden is principally due to the World War. The truth is that the increased cost of running the Federal government is due only in small part to actual war operations, and, of course, the increased cost of our state and local governments has nothing at all to do with the war. Taxes are oppressive primarily because our various governments have been indulging in the greatest and most profligate spending orgy in all history.

STRANGE to say, the radical elements of our population are not responsible for the maze of socialistic and paternalistic activities which have added so greatly to the cost of government in the United States. These groups are no less active than they ever were, but they are no more influential than they ever were. I am not alarmed by them. However, I am alarmed by business men who, professing abhorrence for radical theories of government, insist upon or acquiesce in having the government do things for their own business and do things to other people's business which do violence to sound principles of government. It is they who are largely responsible for the growth of extravagance and bureaucracy in government in the United States.

Such business men have taught the American people the dangerous habit of depending upon government. Lincoln once said:

> "In all that the people can individually do as well for themselves, government ought not to interfere."

Forgetful of his wise counsel, we have permitted ourselves to be led far from the path of common sense in governmental affairs. It was inevitable that there should be a day of reckoning. That day has arrived. If the adversity which has been experienced in the last three and one-half years has taught us anything at all, it has taught us the truth of the axiom that "those who are governed least are governed best."

IT would be unfair and untrue to say that all socialistic developments in government have been the result of deliberate planning. Most of the unsound governmental activities which are now weighing so heavily upon the taxpayers and working so much mischief in our economic life would never have been undertaken if the outcome had been clearly foreseen.

Government operation of barge lines on inland waterways is an illustration.

This operation was started by the United States Railroad Administration during the war period for the avowed purpose of "relieving the railroads," although, as a matter of fact, the war-time congestion on the railroads was in the East and not in the Mississippi valley, and there it was due not to any failing of the railroads but to lack of ocean shipping. Once the government had embarked on the project, however, certain business men clamored for its continuation as "an experiment to demonstrate the practicability of waterway transportation," and those in charge of the "experiment," backed by a powerful lobby, called for and obtained more and more appropriations to build up the fleet, to extend its activities to other rivers, to provide terminals, and to improve the waterways for its use.

This one adventure into socialism has cost the American people many millions of dollars, and the end is not yet.

ANOTHER example of how a seemingly inexpensive government undertaking may add to the public burden is afforded by the railway valuation act that was passed by Congress in 1913. Sponsors of the measure assured Congress that the valuation could be completed in about three years at a cost of around $3,000,000.

The undertaking has now been under way for nearly twenty years, it has cost the government and the railroads $200,000,000, and the end is not yet.

The task before the American people, however, is not to fix the blame for what has occurred, but to work out the solution of the problem which our past misdeeds have created. It is inescapable that our first and greatest undertaking is to reduce the cost of government in the United States. That is not an easy task. It is always more difficult to curtail than to expand. Every branch and bureau and activity of government has its champions and supporters. Every attempt to reduce expenditures will be resisted. But the path of duty is clear.

Although administrative and legislative action to effect reduction of public expenditures and taxes must come from public officials, it would be too much to expect such action in the full extent necessary without the pressure of public opinion so great as to leave no room for doubt as to the will and temper of the people. Results will be in direct proportion to the pressure which is brought to bear upon those in public office.

An outstanding example of effective citizens' action in this direction is furnished by the Committee on Public Expenditures in Chicago. This committee of citizens recently conducted a thorough survey of the financial condition of Chicago and Cook county and succeeded in obtaining the coöperation of public officials to reduce local expenditures covered by taxes from approximately $182,000,000 in 1930 to $122,000,000 in 1933. This reduction is being effected without impairing the efficiency of any essential government function.

Given an aroused public sentiment, there must next be a definite plan of governmental reform in order to insure the best results. As a practical suggestion, I should like to submit such a plan. It is in three parts:

Part 1 relates to expenditures for government undertakings which are absolutely essential. In this group are the expenses of the primary functions of government, the cost of operating the executive, legislative, and judicial branches, the protection of life and property, national defense, and activities of similar nature. These are the necessary undertakings which in their very nature must be the function of government. Such functions must, of course, be continued without impairment. However, material economies can be effected even in this group of expenditures.

As an illustration of what can be

¶ "I am *alarmed by business men who, professing abhorrence for radical theories of government, insist upon or acquiesce in having the government do things for their own business and do things to other people's business which do violence to sound principles of government. It is they who are largely responsible for the growth of extravagance and bureaucracy in government in the United States.*"

done in effecting economies in essential operations, I call attention to what the railroads of the country actually have done. Since 1929 the traffic of the railroads has been cut just about in half, partly as a result of lessened business activity and partly as a result of increased competition of other forms of transportation. Instead of doubling the rates on the remaining traffic—which is the usual course followed in the raising and spending of tax money—the railroads set about to balance their budgets by economies. The result has been that during this 3-year period, without impairing any essential service to the public, the railroads have reduced operating expenses from $4,506,000,000 in 1929 to $3,931,000,000 in 1930, to $3,224,000,000 in 1931, and to $2,402,000,000 in 1932—a total reduction of $2,104,000,000, or 47 per cent. It was a difficult task, but there was no alternative. Anyone can imagine what would have happened to the railroads and to the country if those responsible for their management had faltered in their course.

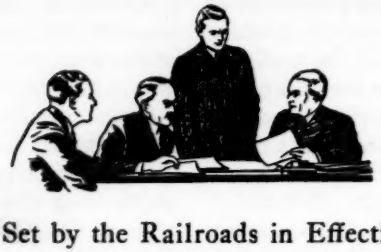
This record of what the railroads have done to economize on essential operations is not submitted as a measure of what the spenders of tax money ought to do along that line. It is entirely possible that they can do more. I think the same standards of economy should apply to managing the public business in a time like this as apply to managing a private business.

PART 2 of my suggested plan for tax relief relates to expenditures for government undertakings that are nonessential but do not meddle in business or seriously impinge upon the rights of citizens as individuals or as earners of a livelihood. To the extent that they add to the general tax burden they do, of course, work mischief.

Bureau after bureau has sprung up and expanded for the purpose of advising and instructing the American people upon almost every conceivable subject. The farmer is told how to grow cabbage, how to feed hogs, how to waterproof shoes, how to shoe horses, how to treat toads, how to raise daffodils. The housewife is told how to make children's rompers, what to wear on sunny days, how to curtain windows, how to fit dresses and blouses, and how to select furniture. Government bureaus tell us of the habits of alligators and bullfrogs, of the weather lore in folk sayings, and how to preserve bookbindings. Someone has said, humorously but with enough truth to give us pause, that Uncle Sam has come to be a grandmother who wakes us up in the morning and spanks us and puts us to bed at night.

Sweeping reductions can be made in all such nonessential activities without in any way impairing the efficiency of government. This calls for reëducation of our generation as to what constitutes the proper functions of government. The sound view will be at variance with some of our cherished ideas and pet hobbies, but our patriotism and sincerity must be put to that test.

PART 3 of the plan I suggest relates to expenditures for those activities of government which, under the guise of helping one portion of our population, serve principally to injure others



The Example Set by the Railroads in Effecting Economies

"WITHOUT impairing any essential service to the public, the railroads have reduced operating expenses from $4,506,000,000 in 1929 to $3,931,000,000 in 1930, to $3,224,000,000 in 1931, and to $2,402,000,000 in 1932—a total reduction of $2,104,000,000, or 47 per cent. . . . The same standards of economy should apply to managing the public business in a time like this as apply to managing a private business."

and to increase the burden upon all taxpayers. If we are to restore government to its proper functions, balance the national budget, and relieve the American people of a crushing burden of taxation, there should be no hesitation in our attitude regarding this class of expenditures.

Innumerable instances could be cited of unsound extensions of government into commercial enterprises in competition with its citizens, but there is no more glaring example of extravagance, injustice, and discrimination to be found than in the field of transportation. A generation ago the railroads had a virtual monopoly of commercial transportation in this country. As a result of their monopolistic status, they were subject to much restrictive regulation. The theory of such regulation was entirely sound, even if its practice was not always sound. It was designed not to injure the railroads but to regulate them so that the public would be accorded fair treatment with respect to rates and service. Such a policy had the virtue of removing favoritism and of applying indiscriminately to all sections of the country. Moreover, the cost of regulation was relatively small and did not appreciably add to the tax burden.

But times have changed. The railroads no longer have a monopoly of commercial transportation. They are in direct competition with carriers operating upon the public highways, with barge lines upon the inland waterways, with pipe lines, and with air lines. Yet, instead of a relaxation of Federal and state regulation to enable the railroads to meet such new competition, regulation of the railroads has increased while other forms of transportation are permitted to operate virtually without regulation.

This in itself gives competing

forms of transportation a decidedly unfair advantage over the railroads, but when to this freedom from regulation is added the further fact that every competitor of the railroads, except the pipe lines, enjoys substantial subsidies and exemptions at the hands of government, the injustice of the situation becomes nothing short of a national scandal.

No person of unbiased judgment will disagree that every commercial enterprise, whether it be engaged in producing transportation or electric energy or boots and shoes, should be made to stand on its own feet and to pay its own way. No person will disagree that each form of transportation, whether it be upon rails, highways, waterways, or airways, should be accorded equality of treatment and regulation under the law. Elemental justice demands equal treatment.

The present discriminatory policy is all the more reprehensible in view of the essential character of the railroads. They constitute the backbone of the American transportation system. Railroads go everywhere and carry everything. They provide fast, frequent, dependable, and economical service the year round in the transportation of passengers, freight, express, and mails. This service is of vital importance to agriculture, mining, manufacturing, lumbering, and every other branch of industry and commerce. Upon the continued operation of the railroads depends the well-being of thousands of communities, large and small, throughout the country.

This great industry—by far the largest in any country on the globe—is a monument to the courage and faith of the American people in the integrity of their government and in its respect for the rights of those who invest in its institutions. Without that confidence, the American railway system would never have been built.

Much as I dislike to say it, that confidence has been betrayed.

Government has not kept faith with the investing public. Not only has it failed to respect investments made for this essential service; it has treated them with such utter contempt that almost the last vestige of confidence among investors has disappeared.

The Federal government has spent hundreds of millions of dollars of taxpayers' money to canalize inland waterways in order to provide free rights of ways to competitors of the railroads, thus giving those competitors an unfair and unnatural advantage over the railroads.

The Federal, state, and local governments have spent not millions but billions of dollars to provide highways over which commercial carriers are allowed to operate in competition with the railroads under conditions that are similarly unfair. These motor carriers enjoy the use of the tax-free public highways, built and maintained at public expense, and are, therefore, relieved of all interest charges and taxes upon the roadway facilities which they use. Moreover, rentals which they pay in the form of license fees and gasoline taxes are not more than one third of the cost of constructing and maintaining the highways, the other two thirds being borne by the taxpayers generally,

including, of course, the railroads.

Government also has expended many millions of dollars to provide ground facilities for the use of air transportation lines and has heavily subsidized air-mail carriers.

As a result of such wholesale subsidization of transportation by water, highway, and air, all within comparatively recent years, the country's transportation facilities have been developed far beyond the nation's needs, and the American people must pay the full cost of building, maintaining, and operating all the transportation facilities provided, regardless of how greatly they are overbuilt. The nation's transportation bill now runs into billions of dollars annually. A considerable part of this bill is paid by the users of the service in the form of passenger, freight, express, and mail rates. An increasingly large part is being paid by the taxpayers. A sizable part of every tax dollar now goes to subsidize commercial transportation companies which are now operating upon the waterways, highways, and airways.

OUR present problem of government in respect to transportation is not how to spend hundreds of millions of dollars more in providing additional facilities, but how to use more efficiently and effectively those which we have, continuing to improve and refine the most useful of them where such improvements meet real needs. In my opinion, there is only one way to solve this problem. That is to eliminate special privileges and subsidies from every form of transportation and to place each agency of transportation on an equal basis with respect to regulation and taxation.

I KNOW of no greater contribution which government could make at this time toward the restoration of that confidence on the part of the investing public which is so essential to economic recovery than the enunciation of a constructive and comprehensive transportation policy based upon the sound economic theory that every form and agency of transportation shall be accorded equal opportunity and shall be made to stand on its own foundation and to bear its own costs, including an equitable share of the tax burden. Such a policy, faithfully and expeditiously carried out, would insure every agency of transportation the square deal to which it is by every right entitled.

In the next number

The Great Tennessee Bubble

The practical economic aspects of the contemplated Federal power development project.

By WILL IRWIN

The Futility of "Yardsticks" for Measuring Utility Costs

The common fallacy that they are either economically sound or legally permissible.

By HENRY C. SPURR

What Others Think

Will the Moratorium Switch the Viewpoints on the Utility Valuation Issue?

THE recent banking crisis brought all America face to face with the stark truth that property values have been shrinking ever since the first blast of the depression in 1929. This fact has never been exactly a guarded secret; indeed, feature articles in PUBLIC UTILITIES FORTNIGHTLY as much as three years ago predicted that, in view of the reverse swing of the commodity and labor price pendulum, the utilities might well consider joining forces with their critics in the adoption of the investment cost basis for rate making in the interest of long-haul stability. But somehow or other, Americans generally figured that we might be able to squeak through the falling market and yet sustain capitalization of high property values. Now we know definitely that a large amount of such former value will simply have to be written off our books. This is true, of course, of all business as well as of the utilities. But it took a presidential proclamation of a bank holiday to make some of us admit it.

Undoubtedly, the declining price trend has made many a utility ponder on the logic of Justice Brandeis' special concurring opinion in the Southwestern Bell Telephone Case. The industry as a whole has not come out openly for a flat return to an investment cost valuation basis, but recent rate valuation decisions by the Maryland and District of Columbia commissions have clearly revealed specific instances where the two-edged sword of the reproduction cost theory has begun to cut backward into the rate base of the utilities. Undoubtedly, too, as the *Electrical World* points out, a part of the original investment of many light and power companies has disappeared because of the present value of the dollar, as well as technological progress. The *Electrical World's* editorial states:

> "These conditions reflect themselves upon the present utility business situation. A new private plant or municipal plant can be built at current values and, assuming the same depreciation rates, these new installations often will have lower fixed charges than the competing utility. In addition there may be savings in operating and maintenance charges resulting from the technological advances. In many parts of the country this competition is occurring, and it would be greater were it not for the difficulty of raising money at present. These local economies do not take into account the over-all economies of a regional power supply, which is the basis of a utility enterprise.
>
> "What should the utilities do to meet this situation? There should be a write-off of old investments against capital surplus to conform to changes in dollar values and a write-off against earned surplus to compensate for the obsolescence caused by technological progress, for this is clearly an operating charge. In addition there should be some readjustment in outstanding securities. These are drastic moves and difficult to make, but they are more and more necessary under the continued economic pressure and the increased local competition."

THERE is no definite evidence that utility critics are retreating in the other direction. The following editorial from *Labor* indicates that it still favors investment cost as a utility rate base as long as it is "honest," "prudent," and "actual":

> "A West Virginia editor declares that the public utilities of that state are retreating, almost frantically, from their claim that utilities should be valued at their estimated 'cost of reproduction new,' and permitted to earn a 'fair return' on that sum.
>
> "What they demand now is a valuation on the basis of investment—a principle which they have fought for years. The

reason is simple. Falling prices and improving technical knowledge have made it possible to build many utilities cheaper now than the actual cost of those constructed in the boom years just before the crash.

"Years ago, when the *Wall Street Journal* and other organs of capitalism were suggesting that the railroads alone should be 'valued' at 36 billions, *Labor* warned that utility magnates would live to see the day when they would regret that they had embraced such a selfish policy.

"That day is here, but *Labor* still holds that utilities should be 'valued' according to the investment."

This editorial could stand a mild correction. While it is true that the utilities have not always been friendly towards investment cost as a rate base, it must be remembered that they contended for such a rate base unsuccessfully in 1898 when the Supreme Court heeded the eloquent pleas, on behalf of the rate-paying public, by the late William Jennings Bryan and decided, in Smyth *v.* Ames, that "present fair value" must be the rate base.

—W. R. N.

CHANGE VALUES AND MAKE SALES. Editorial. *Electrical World.* March 4, 1933.

UTILITIES SWITCH ON VALUATION ISSUE. Editorial. *Labor.* March 3, 1933.

How Much Should the Federal Trade Commission Inquiries Cost the Taxpayer?

CAUGHT between the cross fire of the desire of the new Democratic administration to slash government expenditures on the one hand, and the desire of congressional critics of big business to pursue inquiries into questionable practices of various industries, the Federal Trade Commission found itself very much on the spot during the closing days of the lame duck session of late and unhappy memory.

The opening shots were fired by the commission itself—or rather by its new chairman, Charles H. March, when he assumed those duties early in January. Chairman March outlined in a broad way the future program of the commission and stressed the necessity for its continued activity. He advocated continued vigilance in the enforcement of the antitrust laws, comprehensive study into the causes and preventive remedies of the business depression, and "adequate publicity" regarding corporate investigations by the government to safeguard investors against "such evils as revealed by the Insull collapse."

The new chairman announced that in his opinion the commission's inquiry into electric and gas utilities "should be vigorously pushed" to its conclusion and he pointed out that the commission is empowered to inquire into public utility operations "at any time, even after the present investigation is closed."

Expressing the belief that the honest business man "should be guaranteed the opportunity to carry on his trade under the benefits of free competition, unmolested by monopoly," Chairman March stated that there will be no let-up in the commission's prosecution of the provisions of the Federal Trade Commission Act regarding unfair methods of competition.

He declared further that the commission should scrutinize from time to time the manner in which decrees entered in antitrust cases are being carried out by the parties respondent. Prosecution of antitrust laws saved the public millions of dollars, he declared.

THESE announcements caught the ever watchful eye of the House of Representatives Appropriations Committee, which felt evidently that the ambitious program of the commission ought to be cut down to a minimum, at least until the new administration and the new Congress sees fit to give it more work to do and more money with

which to do it. A fierce attack on the commission's record developed in the House on February 2nd, which resulted in slashing the commission's original request for over a million dollars to $801,476, which was slightly less than $300,000 more than the original committee recommendations.

Two Democratic Texans led the attack. Representative Patman stated that the commission was "useless," that "nobody reads its reports," and that the statutes of limitation will expire before it makes its reports about alleged industrial crimes. Representative Jones stated:

> "I understand that this Federal Trade Commission has practically recommended no legislation. They have made long investigations resulting in printed volumes that practically nobody ever reads. Volumes that practically no member of Congress ever reads or asks about. I believe if this commission is abolished and the work is done by special committees of the House and Senate and by the Department of Justice the investigations will have a real value and we will get reports in time so as to be useful to members of the House in legislation."

VIGOROUS defenders of the commission were Representative Cochran of Missouri and Representative La Guardia of New York. Mr. Cochran stated:

> "The investigation of the commission in reference to the utility companies, if it accomplished nothing more than to remove from the schools and the universities of our country the paid lecturers of the utility companies who were teaching the youth of the land the propaganda handed out by the power corporations, it was well worth more than the sum that has been spent; that alone, I say, has been well worth every dollar used. But if you have followed the reports already made, you will find that public utility commissions throughout the country have used the information to advantage. It was information that the corporations had denied the states, claiming the states had no right to request it. Holding companies held themselves immune from state commissions."

Mr. La Guardia regretted that Congress should "cripple" the only "fact-finding body" of the Federal government at a time when congressional legislation depends so much upon necessary factual basis.

Another Texas Democrat, Mr. Blanton, was in favor of "abolishing the Federal Trade Commission."

Mr. Amlie from Wisconsin reminded the House of the corrupt practices of the power trust unearthed by the commission and inferred that they may still be continuing, whereupon Mr. Woodrum of Virginia replied with humor:

> "Mr. Chairman, I wish in the beginning to brush away a few of the cobwebs that very often enter into a situation where we have much debate by people who, with perfectly good intentions, have not accurately informed themselves upon the subject they are trying to discuss; and I do not mean this in any offensive way to any of my colleagues.
>
> "My good friend, the gentleman from Wisconsin [Mr. Amlie], beats himself upon the breast and pictures to the Congress a great, powerful, well-financed power lobby marching down upon Washington to try to destroy the Federal Trade Commission. If this be true, my feelings are hurt, because here I am, chairman of the subcommittee that has charge of the appropriation, and here are all my colleagues on the subcommittee, and we have not seen a single member of the lobby nor gotten a single letter from him, nor enjoyed one of his cigars, nor a single meal, nor a theater ticket."

A WRATHFUL Senate, led by the now silent voice of the late Senator Thomas Walsh of Montana refused to approve of the House's action, and instructed its confrerés to insist upon $1,000,000 for the commission's appropriation. The dying House let the dying Senate have its own way.

The Scripps-Howard press condemned the action of the House committee as reactionary and destructive. An editorial in the Memphis *Press-Scimitar* stated:

> "If Congress had exact data today about the volume and extent of call loans, the effect of issuing bonds and stocks accompanied by stock-purchase warrants, corporation operations in the stock market, scrip dividend issues, reinvestment of earnings and officers' bonuses, underwriting and syndicate operations, and a variety of other things the commission proposes to put under the microscope, Congress would be floundering less in trying to legislate on

banks, corporate reorganization, and other matters.

"If Congress had the facts the commission proposes to unearth about the relationship between antitrust laws and the petroleum, gas, coal, and lumber industries it might not spend endless time debating these subjects without accomplishing anything.

"In another respect the proposed cut would entail serious loss. It would prevent preparation of a report on the 4-year study of electric and gas utilities which has already brought about important reforms in these industries and is awaited as the basis of holding company legislation.

"The trade commission has been one of the most useful and least expensive departments of the Federal government and is needed more at present than ever before. If its highly skilled workers are allowed to scatter now it will be necessary to reassemble them at considerable loss a little later. True economy dictates continuance of this work."

EQUALLY strong, however, was the denunciation of the commission's record by the *Wall Street Journal*. It stated editorially:

"Here is a commission which for four years has been engaged in an expensive and almost totally useless investigation of the electric power industry. While it was so engaged and before its very eyes the Insull chain of holding companies collapsed, the Insull brothers were indicted, and one of them became virtually a fugitive from justice, stripped of wealth and influence. The courts are at work salvaging the wreckage as they can for creditors and investors, though meanwhile the chief operating companies of the chain go on rendering a wide public service under the regulation of state commissions.

"What part has the Federal Trade Commission played in checking Insull activities, discovering abuses in time to correct them, or setting retribution for wrongdoing in motion? Almost literally nothing, yet the committee's common-sense proposal to reduce the commission's expenditures moves Representative Cochran to this outburst:

"'I cannot understand why the committee asks us to cripple the only government commission which serves to protect the mass of the people.'

"If the mass of the people depend upon the post-mortems of the Trade Commission for its protection from anything, Heaven save them."

Of course, it must be remembered that the forthcoming special session of the new administration has the power to go into the matter all over again and, from informal reports, there is a fair chance that it may do so.

—M. M.

FEDERAL TRADE COMMISSION POLICY. *United States Daily*. January 8, 1933.

Congressional Record. February 2, 1933.

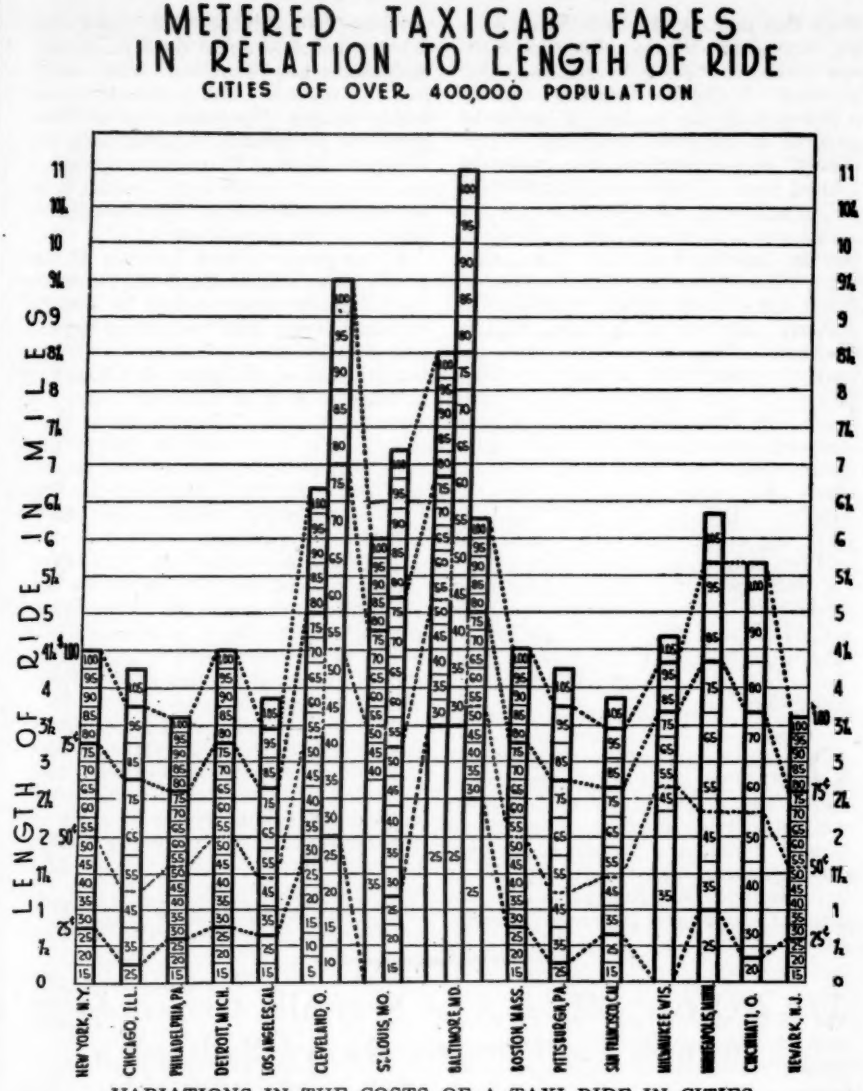
GET THE FACTS. Editorial. Memphis *Press-Scimitar*. January 30, 1933.

PROTECTION FROM WHAT? Editorial. *Wall Street Journal*. February 3, 1933.

What Is a "Reasonable" Rate for Service? The Enigma of the Taxicab

FOR those who like to check up on gas, electric, and telephone rates of the different American cities and to draw conclusions about the reasonableness of these rates based on such comparisons, testimony covering taxicab rates which was recently introduced before the Maryland Public Service Commission should provide a thought-provoking analogy.

The chart here reproduced (on page 415) tells the story more graphically than mere words. It reveals that a dollar bill carries a passenger only three miles and a half in Newark (N. J.) cabs and eleven miles in Baltimore. And this study considers only the metered rates. In Baltimore's neighboring city of Washington where, thanks to congressional protectors of the people's interest, there are no metered rates, reports are circulated of a certain Congressman who was transported from the Navy Yard in southeast Washington to the Mayflower Hotel (a distance of four miles) and deposit-



VARIATIONS IN THE COSTS OF A TAXI RIDE IN CITIES

ing exactly two thin dimes into the hand of the cab driver. But Washington has flat rates. Research Engineer Hawley S. Simpson, of the American Transit Association, who was responsible for this testimony before the Maryland commission, confined himself entirely to metered rates.

Why then the difference? If the same reasoning were applied to taxicab fares as has been applied to gas, electric, and phone rates, one might con-

clude that as Newark residents are paying three times the fares paid in Baltimore, they are being overcharged 200 per cent. Using the Baltimore rate as a criterion in this manner, it might be possible to compute an annual "overcharge" in taxicab fares throughout the United States of well over $100,000,000.

But still, why the difference? True, Baltimore is twice as large as Newark, but the cab fares in New York, Chicago, Philadelphia, and Los Angeles, all much larger than either Baltimore or Newark, are not much lower than in Newark! The size of the city, apparently, makes little difference. Variations in state gasoline taxes could make very little difference in operating costs—less than a tenth of a cent a mile. Automobiles and tires both sell for about the same prices all over the country. Density of cabs seem to offer no explanation. Mr. Simpson told the commission that Baltimore has one cab for every 558 of population while New York has one cab per 431; yet, Cincinnati, with a cab fare higher than Baltimore and lower than New York, has only one cab per 2,890 of population.

Of course, the freak taxi rate in Washington is easy enough to understand. There drivers operate, without liability insurance, from ten to sixteen consecutive hours a day for earnings comparable to peon wages. It is the injured Washingtonians with unsatisfied judgments against poverty-stricken cab drivers, and these cab drivers themselves and their frequently undernourished families, who really pay for the low (flat rate) cab fares which certain Representatives of Congress are so anxious to preserve in the "interest of the Washington people," that they have crippled the District utilities commission in its effort to enforce sane cab fare regulation.

By an ironic turn of fate, the House of Representatives heard on February 13, 1933, that three of their own members had at that time just claims against irresponsible taxicab drivers for serious accidents in Washington, all amounting to $5,000, from which they could not collect five cents. Representative Boylan of New York told the House that such unsatisfied judgments now gathering dust in the record book of the District of Columbia courts alone exceed a half million dollars.

But Baltimore cabs must now carry insurance and meters—thanks to the Maryland commission which is contemplating even further regulation.

So, again the question arises, why the difference in taxicab rates between Baltimore and Newark?

Mr. Simpson did not attempt to explain the difference. Newark cab fares are not held up artificially by regulation. It really is a situation that might well engage the talents of the recently organized Institute of Public Engineering.

—M. M.

TESTIMONY of Hawley S. Simpson before the Maryland Public Service Commission.

The Relative Efficiency of Federally Owned, State-owned, and Privately Owned Railroads

THE American citizen has become conscious of his tax burden. His usual inarticulate acceptance of the yearly luxury of making out tax returns is giving place to expressions of rage and even to threats—in some noteworthy instances carried out—of a taxpayer's strike. As his purse grows flatter he takes a proportionately keener interest in his government. He deplores the republic's vast horde of poor relations who must be maintained at his expense. He may be alarmed at the possibilities of still greater expenditures consequent to the invasion of government in such private business enter-

prises as, let us say, the railroad business if and when the vast loans of the Reconstruction Finance Corporation to the railroads cannot be repaid. Nor will he find much comfort on that score from a recently published study of similar experience of the sister republic of Brazil.

Brazil has a Federal and state government, somewhat like our own. It also has a railroad problem. This is admirably stated by Dr. Julian Smith Duncan in his recently published book on this subject. Brazil's problem originally started because the Federal government was forced to take over certain railway lines after the privately owned lines found it impossible to make good on government loans.

IN Brazil today there are federally owned railroads operating side by side with state and privately owned railroads. Here, then (as in Canada), is a fine laboratory experiment from which conclusions may be drawn concerning the relative advantages and disadvantages to the general public of the different types of operation.

There is food for thought in Dr. Duncan's remark concerning the manner of acquisition by the government of certain railroads in Brazil; he states that "no private companies could be found to take over the bankrupt firms, and the government was forced to take them over." After several years of this, in 1930, the percentage distribution of ownership and operation of the Brazilian railways was as follows:

	Ownership	*Operation*
Federal government ..	59	29
State government	9	23
Private	31	48

Keeping in mind that the government was forced to take over the less profitable lines, the figures for operating ratios from 1923–1928 (Class I and II railways) are nevertheless significant:

Federal government	127.6
State government	93.2
Private	75.2

The federally owned railroads show annual deficits that the taxpayer must make good. The author concludes that the Federal government management may be criticized for selling transportation "at a figure admittedly below out-of-pocket costs in handling the traffic." Dr. Duncan continues:

> "The government is likewise responsible for the expenditure for excess personnel, appointed for political purposes, of funds needed for more and better supplies and equipment. In the same class, and perhaps less defensible from any point of view, is the complete diversion of funds borrowed for the purpose of electrification of the 'Central de Brazil' to 'other purposes.' It seems impossible to avoid the conclusion that the political slant of the management of the railways of the Federal government has retarded their development as transportation units."

State operation of railways in Brazil has proved better than Federal operation. The author, however, reminds us that the states have operated large systems for a comparatively brief period, only since 1920, and adds that "there are grounds for believing that the effects of political abuses in government railway administration are cumulative with the passage of time." To justify this statement he cites the case of the government-operated railroad Central de Brazil which from 1872–1881 had an average operating ratio of less than 50 per cent, while from 1912–1919 it had jumped to 132 per cent.

Dr. Duncan's analysis is supported by considerable statistical evidence; taken as a whole, his work provides an impartial study of results of government ownership and operation of railways in Brazil. It furnishes a clue to what the American taxpayer may reasonably expect when government participates directly in the transportation business.

—DONALD ARMSTRONG
Fort Bragg, N. C.

PUBLIC AND PRIVATE OPERATION OF RAILWAYS IN BRAZIL. By Julian Smith Duncan. New York: Columbia University Press. 1932. 244 pages. $3.75.

The Rising Tide of Antiutility Merchandising Bills

A FRESH wave of proposed anti-merchandising laws swept over the country during the current state legislative sessions when a total of twelve state legislatures were asked to consider bills for such enactments, in addition to Kansas and Oklahoma where there have already been enacted laws definitely forbidding public utilities from engaging in the sale of gas and electrical appliances or other such merchandise.

It had been thought that the peak of this movement was reached last January when the now defunct and lamented *United States Daily* reported that a bill to repeal the Kansas law had been introduced in the legislature of that state —presumably as the result of dissatisfaction with the law on the part of publishers and others who have suffered from the unquestionable dimunition in the volume of the trade in these commodities since the enforcement of the act. But while Kansas repeal lingers in a committee pigeonhole, more and more state legislators are harkening to the call of the retail appliance men who stand to benefit from such legislation.

While noting a more hopeful sign in the recent adverse report of a Missouri committee on "House Bill No. 181" to prohibit utilities from selling merchandise, one is at the same time struck with the prompt editorial reaction of a number of Missouri newspapers which indicates definitely and significantly the prevalency of the idea that utility merchandising is harmful to public interest. The following excerpt from an editorial in the St. Louis *Post-Dispatch,* entitled "A Justified Restraint," is interesting because it is a typical specimen:

> "The complaint of small dealers in utility appliances is that the utilities frequently sell such equipment at a loss, charge the loss to operating expenses and make it back in the increased use of the utility's product, whether it be electricity or gas. Unfair as such a practice is to the appliance merchant, it is much more reprehensible when considered in terms of the consumer. Operating losses constitute an item never overlooked in rate making. Monopolistic in form and existing by grant of the state, utilities are assured a fixed return on their investment. When they sell fixtures at a loss and provide services which they could not possibly offer were it not for their favored position, all at the expense of the people, they indulge in a practice which, sooner or later, must be restrained by law.
>
> "Laws similar to the one proposed for Missouri have been enacted in Kansas and Oklahoma. At the present time such proposals are before the legislatures of Illinois, New York, Michigan, Nebraska, Oregon, and New Hampshire, while, according to recent information, they are to be offered in Wisconsin, Ohio, Alabama, and other states. The movement has become national in scope. It will be to Missouri's credit to be one of the leaders. Accordingly, we urge the house committee to reconsider."

UNFORTUNATELY for the utilities, who depend upon the promotional sale of appliances for necessary expansion of consumption and patronage, the statement to the effect that ratepayers must underwrite appliance sales deficits has a bare color of truth which makes it insidiously effective. Under the present uniform classification of accounts for gas and electric companies in many states, these utilities are allowed and sometimes required to charge merchandising losses to operating expenses and merchandising profits to operating revenues, so that theoretically, ratepayers may be called upon to absorb small losses which may be incurred in the handling of merchandise by the utility. Where the loss (or profit) is large enough to attract attention or objection, the commissions and courts have with few exceptions required a segregation of operating and merchandising accounts, as shown by a legal survey of authorities published in PUBLIC UTILITIES FORTNIGHTLY two years ago. But what was really intended as a matter of bookkeeping convenience has grown into a cause of complaint and suspicion.

The Wisconsin legislature has handled this issue energetically by requiring by statute a strict segregation of merchandising and operation accounts. However inconvenient this may be to the utility accountants, it at least permits those utilities, who want to do so, to carry forward their merchandising business without suspicion that the ratepayers are subsidizing it. This seems a reasonable solution especially in the face of the wave of out-and-out anti-merchandising laws that now sweeps the country. Quick and intelligent coöperation between utilities, commissions, and legislatures would undoubtedly result in this less harmful of the two restrictive measures being adopted. Utilities would then have a clean-cut defense to the arguments put forth by the advocates of absolute merchandising prohibition.

THE unfortunate effect of the present uncertain situation was reflected in a recent editorial in the *Electrical World,* which pointed out the failure of "half-way selling." The editorial stated:

> "Utilities, for example, have passed the stage wherein they did all the merchandising to a stage where many sit inert for fear of disturbing dealer or public relations by aggressive or selfish selling. Half-way merchandising is just as bad as no merchandising or selfish merchandising. Either a utility should quit merchandising on this basis or get busy on the development of coördinated community merchandising. There is no compromise. In this period the utility should take the lead in each community in developing aggressive merchandising whereby all sales outlets sell the home under a coördinated plan. Before the utility ceases merchandising, if ever, it must help develop other sales outlets."

Despite the probable truth of the *Electrical World's* editorial statement, one can hardly blame utilities for being hesitant about organizing large sales forces, and investing heavily in modern sales methods, when a hostile legislature may at any time outlaw their business. The situation calls for action. The enactment of segregation statutes would unquestionably clarify and stabilize the situation, although there are undoubtedly many factors to be considered even before such enactments.

For those utility men who may be considering resisting antimerchandising statutes in the courts on constitutional grounds, attention is directed to those decisions of the Supreme Court which ordered the packers out of the retail grocery business. Utilities may well ponder this experience of the packing industry. It begins to look like half a loaf or none on the merchandising issue.

—F. X. W.

A JUSTIFIED RESTRAINT. Editorial. St. Louis *Post-Dispatch.* February 27, 1933.

HALF-WAY SELLING FAILS. Editorial. *Electrical World.* March 4, 1933.

Other Articles Worth Reading

EXPENSE AND CAPITAL RATIOS OF WISCONSIN ELECTRIC, GAS, TELEPHONE, AND WATER UTILITIES, 1927–1931. By Barclay J. Sickler. *The Journal of Land & Public Utility Economics.* February, 1933.

HEARINGS ON PENSION LEGISLATION. *Railway Age.* January 28, 1933.

MUSCLE SHOALS AND UTILITY INVESTMENTS. By James C. De Long. *The Financial World.* February 22, 1933.

PUBLIC UTILITIES FACE CHANGING TRENDS. By M. Davis Gould. *The Magazine of Wall Street.* March 4, 1933.

RAILWAY REGULATION IN PRACTICE. *Review of Reviews and World's Work.* March, 1933.

REFUTING THE CHARGE "BUSES ARE UNREGULATED." By Ivan Bowen. *Bus Transportation.* January, 1933.

THE GREAT LAKES-SAINT LAWRENCE SEAWAY PROJECT: *The Case For,* by Col. Wm. Nelson Pelouze; *The Case Against,* by R. H. Aishton. *Nation's Business.* February, 1933.

UTILITIES IMPROVE OPERATIONS. *Electrical World.* January 7, 1933.

WHAT COURTS CAN LEARN FROM COMMISSIONS. By Harold M. Stephens. *American Bar Association Journal.* March, 1933.

WHAT'S WRONG WITH UTILITY STOCKS? By James C. De Long. *The Financial World.* February 15, 1933.

WHOLESALE ELECTRICITY IN THE DEPRESSION. By L. G. Cannon. *The Journal of Land & Public Utility Economics.* February, 1933.

WHY PUBLIC UTILITY REGULATION OF MOTOR TRUCKS? By Theodore D. Pratt. *Bus Transportation.* January, 1933.

Recent Utterances of Congress about the Utilities

In the Senate

THE GOVERNMENT OWNERSHIP OF RAILROADS

SENATOR Brookhart (R.), of Iowa, asked and obtained leave to have printed in the *Record* an address by Samuel Untermyer, of New York, delivered before the University Club of Los Angeles, Cal., on February 27, 1933, entitled "Hobson's Choice between Government Ownership and Bankruptcy of the Railroads." Mr. Untermyer's address reviewed instances of alleged mismanagement of the railroads and concluded with arguments for immediate government ownership and operation through nationalization of the railroad industry. He was of the opinion that there will never be a better opportunity than the present for the government to take over the railroads. Mr. Untermyer said he regarded "Mr. Hearst as by far America's outstanding patriot and statesman, with the courage of a martyr." (*February 28, 1933.*)

REGULATION OF WASHINGTON TAXICABS

ON motion of Senator Copeland (D.), of New York, a District of Columbia appropriations bill was amended so that no part of the appropriations for the District of Columbia Public Utilities Commission shall be used for the preparation, issuance, publication, or enforcement of any regulation or order requiring the installation of meters in taxicabs, until such order or regulation has been approved by Congress. It was explained that because of the controversy which the Washington meter rate order has aroused in Congress the purpose of the provision was to maintain a *status quo* until the new Congress would have the opportunity to approve recommendations of the commission. (*March 3, 1933.*)

INVESTIGATION OF UTILITIES

SENATOR Barkley (D.), of Kentucky, reported back favorably from the Senate Committee on Interstate Commerce, the joint resolution (H. J. Res. 572) to provide for further investigation of certain public utility corporations engaged in interstate commerce. The expenses of the investigation are to be paid out of the contingent fund of the House. The resolution which was adopted carried an appropriation of $50,000. (*March 3, 1933.*)

In the House

FOR REGULATING THE RAILROADS' COMPETITORS

REPRESENTATIVE John G. Cooper (D.), of Ohio, spoke in favor of strict regulation of agencies which compete with the railroads. Representative Cooper commended the work of the Interstate Commerce Commission and advocated placing the regulation of railroad transportation competitors under the Interstate Commerce Commission. (*February 28, 1933.*)

TAXICAB RATES

REPRESENTATIVE John J. Boylan (D.), of New York, in connection with the controversy over taxicab fares in the city of Washington, obtained leave to publish in the *Record* a table which he compiled showing the rates of taxicab fares in other cities similar in population to Washington. The complete table which was published in the *Record* shows the proposed and existing taxicab regulation as of February 1, 1933, in 94 American cities ranging in population from Zanesville, Ohio (30,450) to New York city (6,017,000). (*February 23, 1933.*)

OBJECTION TO THE ST. LAWRENCE TREATY

SENATOR William E. Hull (D.), of Illinois, addressed the House for fifteen minutes in opposition to the proposed St. Lawrence treaty. Mr. Hull's principal objection to the treaty was Article VIII, which he claimed would impose a heavy tax burden on the people of the Middle West and the South for a project which they could not utilize without a successful Lakes-to-the-Gulf waterway. (*March 3, 1933.*)

The March of Events

Utilities Coöperate during Banking Crisis

PRESS dispatches from all quarters of the country during the recent bank holiday proclaimed by President Roosevelt indicated that public utility companies were coöperating in the national bank crisis by extending credit, accepting scrip, and otherwise relieving the cash shortage of their patrons, many of whom were caught with practically all of their funds tied up in bank deposits.

In the District of Columbia, suspension of the customary 10 per cent charge for failure to pay gas and electric bills within the 20-day period of grace was ordered by the District of Columbia Public Utilities Commission to cover the entire week of March 6th. William F. Ham, president of the Washington Railway and Electric Company, announced on the same day that his company had made plans to sell street car tokens on credit to business organizations with proper references.

Electric Output in 1932 Down 10 Per Cent

A DECREASE in the production of electricity in the United States of nearly 10 per cent in 1932 is the highest decline in three years, according to a statement made public February 27th by the Geological Survey, Department of the Interior. The output for the year was 82,938,000,000 kilowatt hours. The production by water power was 41 per cent of the total and was 11 per cent greater than in 1931. The increase in efficiency in the use of fuels for generating electricity continued. The percentage decreases in the past three years are as follows: 1.5 in 1930, 4.4 in 1931, and 9.6 in 1932. The total production of electricity for public use in 1932 was about 15 per cent less than in 1929. The decrease in gross revenue from sales of electricity for the same period, according to the *Electrical World*, was less than one half of this percentage.

Alabama

Municipalities May Mortgage Utilities

ACCORDING to a Montgomery dispatch on March 1st to the *United States Daily*, Governor Miller has signed a bill (S. 72) permitting cities and towns in Alabama to secure payment of debts incurred for construction, extension, or maintenance of waterworks, lighting, or power systems or plants by executing a mortgage or deed of trust on them and property used in connection therewith.

The Montgomery *Journal and Times* also reports that on February 17th, Representative George A. Sossaman, of Mobile, introduced a constitutional amendment as a move toward furthering the municipally owned power plant plan. The Sossaman amendment, the author stated, will permit cities and counties to construct publicly owned power plants and distribution systems with borrowed money, although he would not have the amount of such borrowings apply against constitutional debt limits.

It was pointed out that the city of Mobile, among many other cities and counties in the state where the public plant question has been agitated, is so close to its constitutional debt limit that sufficient money could not be borrowed legally for the actual construction.

California

Regulation Urged for Private Motor Trucking

A SACRAMENTO dispatch of February 27th to the *United States Daily* reports that a bill (A. 1320) has been introduced in the California legislature to provide for the creation of the California Truck Commission to regulate and supervise all private highway transportation companies.

Such a company is defined in the bill to mean any corporation or person "owning, controlling, operating, or managing any motor

vehicle used in the business of transportation of property for compensation, over any public highway in this state and not operated exclusively within the limits of an incorporated city or town or a city and county and who is not a common carrier as defined by § 2168 of the Civil Code of California and by the supreme court of the state of California on December 30, 1932, and (or) is not operating 'between fixed termini or over a regular route' as said phrase is defined by the supreme court of Minnesota in the case of State *v.* Boyd Transfer & Storage Co. 209 N. W. 873."

The bill provides that any such person who has operated a motor vehicle in such manner for the period between July 1, 1932, and June 30, 1933, shall be granted an operating permit to continue in the same manner. Others desiring to engage in similar business would be required to apply to the commission for a permit, "and shall prove to the satisfaction of said commission, as a condition precedent to the granting of such operating permit, that their proposed operation would not injure or impair the function of existing transportation agencies, thus making it difficult for said existing agencies to render an efficient transportation service."

The commission would be required to establish minimum rates for the hauling of different commodities, and the bill states that such rates should be the same as those established by the railroad commission for common carriers by rail or highway.

Power Boycotts Proposed to Force Rate Reductions

THE advisability of turning off their power to compel a reduction in power charges by the San Joaquin Light and Power Corporation was to be discussed by raisin growers at a mass meeting to be held in Fresno early in March. Announcement of the plan for mass action in an effort to obtain lower power rates was made by J. M. Euless, head of the Fresno Thompson Raisin Pool, the directors of which met on February 23rd to set a date for the mass meeting, according to an announcement in the Fresno *Bee-Republican.*

A similar action against the Alameda board of public utilities was indicated in a dispatch on February 14th from that city to the Oakland *Tribune* to the effect that unless electric power rates charged the city are reduced, the use of electricity for heating fire stations and the Alameda health center building may be abandoned in favor of a cheaper kind of fuel. The threat was made by City Manager Ralph M. Bryant, who pointed out that the board now charges the city the same rate for electricity for heating as for street lights. While the department of electricity is municipally owned, the charge for electric current used by the city departments is levied the same as in the case of private consumers.

Delaware

Lower Electric Rates Promised for Wilmington

IF there is a sufficient increase in business in 1933 to warrant it, the Delaware Power and Light Company will make a reduction in their electric power rates in Wilmington and vicinity, Thomas W. Wilson, president of the company, told members of a special committee of the house of representatives on February 16th. The committee was appointed in January to investigate rates charged by utility companies operating in Delaware.

District of Columbia

Rate Cut Favors Small Consumer

FOLLOWING issuance on February 18th of new electric rate schedules, the public utilities commission set forth in a formal statement its position as champion of the small consumer and of the "block" system of fixing charges, according to a news item in the *Evening Star.* The new rates which went into effect February 20th are expected to save domestic consumers $99,000 a year. Savings also will be effected in other classes. Reduction in the charge for street lighting was also ordered. This will reduce the expenses of the District government by approximately $138,000 a year.

The statement asserted that the commission has sought consistently to make the rate fair for small consumers, as evidenced by the fact that in Washington the consumer who uses 50 kilowatt hours or less pays less than the average charge for similar use in 13 large cities, including Jacksonville, Florida; Columbus, Ohio; Lincoln, Nebraska, and Los

Angeles, California, where the power is supplied from municipal plants, and by the further fact that the consumer in Washington who pays the minimum bill, 75 cents, can use 19 kilowatt hours, while in these same 13 cities with municipal plants, the average charge for 19 kilowatt hours is about 95 cents.

The new domestic schedule which contains rates applicable to the average householder, charges 3.9 cents per kilowatt hour for the first 50 kilowatt hours, 3.6 cents for the next 50, 2.9 cents for the next 50, and 2 cents for all in excess of 150 kilowatt hours per month. Electricity in the District is furnished by the Potomac Electric Power Company.

Idaho

Municipal Ownership Voted Down in Boise

THE Idaho senate has defeated two resolutions for the extension of municipal ownership of utilities, according to a Boise dispatch of March 1st to the *United States Daily*. One was a joint resolution which would permit a municipality to acquire public utility plants by condemnation or other means, and would have eliminated private competition against a municipal plant. The other would have permitted a city council upon majority vote of the people to acquire a plant, making payment from earnings.

Illinois

Lower Gas Rates Considered for Northern Section

FINAL arguments before the Illinois Commerce Commission in the natural gas rate case, in which attorneys for Chicago and other municipalities are seeking lower gas rates for the public from the People's Gas Light and Coke Company and Public Service Company of Northern Illinois, were concluded on February 18th. The case was taken under advisement by the commission which must make a decision before June 17th, according to the Chicago *Tribune*.

Assistant Corporation Counsel Joseph F. Grossman argued on behalf of Chicago; T. E. White of Ottawa for 37 other Illinois cities; Francis L. Daily for the People's Company, and Harry J. Dunbaugh for the Public Service Company.

Mr. Grossman declared that if the companies would reduce their rates 30 per cent consumers would use enough additional gas to allow the same return to the concerns which they are now receiving. Mr. Daily said that "if the People's Company operated in 1932 as the city is asking us to operate in 1933, we could not have paid the interest on our funded debt." Mr. White urged the commission to make a complete and exhaustive audit of the Public Service Company's books and an appraisal of the property involved.

Replying for the company, Mr. Dunbaugh declared that while the 1932 return was 3.69 per cent, that for 1933 would be only 3.15 per cent.

The Chicago *Journal of Commerce* for March 1st announced that a delegation representing suburban towns and villages in Cook county visited the Illinois Commerce Commission on February 28th with petitions asking an immediate 20 per cent reduction in utility rates, including the gas rates. In the petition the commission was asked to reduce rates at once and then conduct an inquiry to determine whether even further reductions may be obtained. Acting Chairman Andrew Olson of the commerce commission permitted the filing of the petitions and said they would be considered by the commissioners.

Meanwhile, what is termed a substantial reduction in gas rates charged by the Western United Gas and Electric Company, is believed to be a possibility in the near future, according to reports made at a meeting of municipal officials of the cities served by the Western United, held at Aurora on February 17th. The session of the Association of Municipalities of Northern Illinois was called by the chairman, Mayor C. M. Bjorseth, of Aurora, for the purpose of hearing progress made in the recent rate hearings before the state commerce commission, such reports made by the chief counsel for the cities, Malcolm Mecartney, of Hinsdale, according to the Elgin *Courier-News*.

Indiana

Indianapolis Seeks Review of Water Rate Case

ON the plea that the public service commission as now constituted has "arbitrarily and unreasonably" denied patrons of the Indianapolis Water Company a rehearing on the schedule of "unjust and excessive" rates put into effect January 1, 1933, the Indianapolis and south side civic clubs during the last week of February filed an appeal in the Marion county circuit court.

"No relief to this plaintiff or other patrons of the Indianapolis Water Company can be obtained from the said commission, or otherwise than by a review by this court of the said order and of the evidence on which the same is based," the suit to set aside and vacate the rate increase order asserted. The suit also pointed out that on February 2nd two remaining members of the former commission who wrote the January 1st order and a third commissioner, Perry McCart, appointed by Governor Paul V. McNutt, refused attorneys for the city and patrons a rehearing and denied the right of oral argument on the motion.

Maine

Commission Completes Successful Rate Negotiations

SEVERAL conferences were held during the early part of the year between the Maine commission and officials of Maine Public Service Company operating principally in Aroostook county with regard to rates. As a result of the conferences, a substantial reduction of rates of the company for all classes of electric service in Aroostook county will be in effect at an early date, according to a statement issued by the commission on March 1st and published as an Associated dispatch in all the leading daily papers of the state.

The rates of the Maine Public Service Company have been under consideration by the commission for sometime, originating with the complaint of five companies purchasing energy at wholesale for distribution in towns served by them at retail. Complaints have also been received from several towns where retail service is furnished directly by the Maine Public Service Company.

The commission made a complete valuation of all the properties not used in serving both wholesale and retail customers in Aroostook county, and subsequent to these hearings and prior to the issuance of formal decisions by the commission, the company requested conferences with the commission to discuss primarily the retail rate schedules in its entire territory. These conferences were extended to a consideration of wholesale rates as well as retail, and representatives of the complaining wholesale companies were invited to participate.

The Maine Public Service Company reported for the year 1932 a considerable loss of business, resulting in a reduction of revenue below the level for the year 1931. Indications are that further losses in business may be expected during 1933. Revisions in rates were proposed by the company to effect a substantial reduction in charges to both wholesale and retail customers.

The wholesale companies agreed to the proposed rates as a temporary expedient for a trial period. Following the filing of the new rates, to be made effective April 1, 1933, the commission will issue an order holding open the present complaint until, in its judgment, further action is warranted.

Maryland

Council at Odds over Rate Cut

A RESOLUTION calling on Governor Ritchie to demand an explanation from the public service commission for its acceptance of the "paltry" reduction in electric rates of the Consolidated Gas and Electric Company, and asking an inquiry into all utility rates, developed on March 2nd into a discussion of whether the Baltimore city councilmanic action would be of any avail, according to the Baltimore *Evening Sun*. About thirty persons attended the meeting, including several councilmen not on the committee conducting the hearing. Some of the spokesmen for the public argued that rates should be reduced consistently with the drop in costs of labor and materials. The hearing was inconclusive, some of the members declaring that no end would be gained by passing such resolutions.

Massachusetts

Two Public Plants Announce Rate Reductions

Two Massachusetts municipalities operating their own electrical plants have announced rate reductions to become effective within the next few months.

Andrew F. Pope, general manager of the Hull Electric Light department, a municipal plant, announced that a reduction in the price of electricity would become effective April 1st. The new rates will be cheaper by a cent per kilowatt hour. The first 40 kilowatt hours will be 6 cents, with the next 60 at 5 cents, and all over 100 at 2½ cents. A minimum charge of $1 per month was included in the proposed electric rate schedule.

The Taunton lighting plant commission informed the committee on needs of the lighting plant at a meeting held February 18th that after an intensive study of the problem of providing additional capacity, it had decided in favor of the installation of a 7,500 kilowatt turbo-generator unit at one of its local generating stations. It announced, also, that a rate reduction which would save customers of the lighting plant $50,000 a year would be effective June 1, 1933.

Michigan

New Fight Looms on Telephone Rates

Another major battle in the long warfare between the state and the Michigan Bell Telephone Company is expected to open within the next few weeks, according to a Lansing dispatch to the Detroit *News*. The audit and appraisal of the Michigan Bell Telephone Company's properties, instituted by the Michigan Public Utilities Commission late in 1930, is almost finished. The result has not been made public, but it is believed at the capitol that it will give the commission a definite basis for holding hearings to determine whether or not telephone rates should be reduced.

The Detroit *News* stated, however, that it was reported that the members of the commission did not believe that lower rates actually could be put into effect until the Michigan Bell Telephone Company and its parent corporation, the American Telephone and Telegraph Company, have exhausted legal remedies, and that future proceedings would occur in the Federal courts, including possibly appeals to the Supreme Court. The company's affairs were previously aired before the commission and Federal courts.

Minnesota

Minneapolis Moves for Lower Gas Rate

Proceedings expected to lead up to a city council demand for reduction of gas rates were begun February 20th, when the Minneapolis council's special committee on gas and electric rates appointed a group of three members and the city attorney to find out how the council should proceed in exercising the franchise provision for revision of rates every three years. Members of the subcommittee are Alderman W. A. Currie, council president; Aldermen Frank Brown and John Swanson, and Neil M. Cronin, city attorney.

The action was taken without discussion, but after the meeting, members indicated they expect the subcommittee to recommend hiring of experts to obtain data on which a new rate set-up could be based.

Informal discussion, reported in the Minneapolis *Journal* also revealed the possibility of renewed agitation of the question of municipal ownership, last actively discussed about a year ago. Alderman H. H. Chase, who led the city ownership movement at that time, said his group had been collecting data on municipal plants, and forecasted that there would be strong sentiment in that direction.

Nevada

Public Ownership and Revised Regulation Urged

A CARSON City dispatch to the *United States Daily* of March 1st, indicates that a special committee from the Nevada house of representatives, appointed to attend a hearing before the public service commission relative to a reduction in the rates of the Sierra Pacific Power Company, has reported to the house that the committee believes relief to the public can be brought about only by public ownership of the utility. It was asserted that the commission possesses ample power to deal with the situation and should have ordered a reduction of at least 25 per cent in the present rates.

The committee declared that "the public service commission, being one of the heavy burdens which the state is carrying, should justify its existence before the close of this legislative session or be abolished and its duties transferred to an elected official who should be allowed two extra deputies to perform the duties."

A communication of the public service commission to the house on February 16th asked for funds to conduct its inquiry into power rates, and submitted a proposed bill which would require the public utility investigated to pay the costs of the investigation. No action was taken on either recommendation other than to order 500 copies of the committee's report printed which is twice the number usually printed.

New Jersey

Direct Legislative Rate Reduction Urged

A BILL (A. 286) directing the board of public utility commissioners to institute proceedings for a reduction of one third of present rates of electric, gas, telephone, and water service was introduced by Assemblyman Brown, chairman of a committee appointed to investigate the alleged excessiveness of existing rates, according to a Trenton dispatch on March 1st to the *United States Daily*.

All milk and milk products would be placed under the jurisdiction of the utility board under a measure (S. 203) by Senator Cole. A companion measure (S. 204) would include milk producing and distributing companies in the classification of public utilities.

Electric Rate Cut Follows Agitation

A CUT in electric rates of the New Jersey Power and Light Company expected to save consumers between $155,000 and $160,000 a year was announced on February 21st by Joseph F. Autenrieth, president of the public utilities commission. The reduction became effective March 1st. The cut came after customers and municipalities served by the company in and around Dover announced their intention to apply to the legislature for relief from alleged excessive costs, according to a Dover dispatch to the Newark *Ledger*.

President Autenrieth stated that the slicing of rates follows several months of investigation by the commission and negotiation with the company's officials.

New York

Commission Report Favors Rate Reduction

RATE reductions on a broad scale must be regarded as the fundamental principle of regulation during the coming year, the public service commission announced in its annual report which was recently released for publication.

Lower rates are not only desirable as a stimulus to increase consumption the commission finds, but they are imperative for the relief of all classes who are finding it difficult and in many instances impossible to pay for the service to which they are accustomed at present rates.

Wherever possible, the report states, the reductions should be made voluntarily by the utility companies to spare the stockholders and the state the expense of long rate litigation. Voluntary cuts are, of course, subject to review by the commission.

The commission recalled that its preceding

report disclosed that the large amount of gas and electricity used by domestic consumers whose consumption remains nearly constant regardless of the ups and downs in the industrial or commercial world furnishes a backlog of safety during times of depression. It has continued to be true to a very large extent, but in some instances even residential consumers have begun to curtail their use. As an effective means of increasing the use of utility service, rate reductions are most important. A survey of rates for utility service in other states, as well as in New York, was said to demonstrate that where rates are low the amount of electric, gas, and telephone service used is high, and, where rates are high, such use is low. A further advantage of immediate reduction was said to be the increased profits that would in turn allow further reductions to be made as a result of increased consumption.

Cheap Rates for St. Lawrence Power Pictured

DEVELOPMENT of the St. Lawrence hydroelectric power would pave the way for a general reduction in the cost of electricity to the domestic consumers throughout the state, according to the annual report of the state power authority, which was submitted to the legislature March 8th. Declaring that the current generated on the St. Lawrence could easily be made available for use in New York city, the report went on to cite figures to show that the power could be distributed there for about 3 cents per kilowatt hour.

The report of the trustees reviewed the intricate negotiations with the Federal government on a treaty with Canada for construction of the seaway and the power project, as well as the allocation to New York state of $89,726,000 as its maximum contribution for power construction. The report stated that the trustees of the board feel that the availability of a huge block of exceptionally cheap hydroelectric power will furnish the increased current at such low cost as to assist the electrical industry to shift to the low promotional rates which will ultimately make possible the complete development of the domestic field. The report was submitted by Frank P. Walsh, chairman; Delos M. Cosgrove, vice chairman; James C. Bonbright, secretary; and Morris L. Cooke and Fred J. Freestone, trustees.

In concluding, the report urged enactment of the so-called municipal power bills under which municipalities, after approval by referendum, could engage in "manufacture, purchase, and sale of electricity." Such measures, according to the trustees' report, would develop "a salutary force of competition."

Statewide Rate Probe Studied

ALTHOUGH the state public service commission declined to undertake a general investigation of the rates charged by the 1,100 public utilities under its jurisdiction, as urged by the Syracuse city council, a second measure providing for an investigation of utilities made its appearance in the legislature at Albany on March 1st, being introduced by Assemblyman Maurice FitzGerald, a Queens Democrat. The first measure to be introduced in this session was sponsored by Senator Philip N. Kleinfeld, Brooklyn Democrat. The FitzGerald bill calls for a legislative commission to make a statewide study of gas and electric rates and to inspect the financial structure of the companies.

In its reply to the probe urged by the Syracuse city council, the public service commission through a letter by its secretary, Francis Roberts, stated that the state has 110 rate cases pending at the present time and that it has neither the time nor funds nor personnel to undertake an investigation of all utility rates "from Montauk Point to Chautauqua county."

Hope of utility rate reductions in Syracuse itself was further discounted by a statement of Chairman Milo R. Maltbie, as reported in the Syracuse *Herald* to the effect that the present gas rates of Syracuse save consumers approximately a half million a year, while the electrical rates are the second lowest of the larger cities of the state. The commission stated that its present negotiations with utility companies for rate reductions would not reach the Syracuse territory until some disposition had been made on schedules of communities paying higher rates.

Pennsylvania

Communities Unite for Gas Rate Reductions

A MOVEMENT to obtain gas rate reductions from the Manufacturers' Light and Heat Company, backed by 450,000 persons in 35 communities, was started on February 18th and will be continued until definite action is obtained, according to a news item in the Pittsburgh *Press*. A permanent organization to prosecute its program, raise money, and

collect data was effected at a meeting in the William Penn hotel at Pittsburgh on February 17th, called by Mayor Robert E. Griffiths, of Washington, Pa.

D. Glenn Moore, former state representative of Washington, Pa., is president; Judd C. Turner, of Ellwood City, vice president; Charles H. Stone, of Beaver, secretary; and Harry Campbell, of Washington, treasurer. The organization will concentrate its attention on securing the reduction of gas rates which Mr. Campbell charged have brought dividends greater than the capital invested, and have yielded a surplus of nearly 50 per cent of the company's capital structure.

Repeal of the Pennsylvania act of 1917 which permits the admixture of natural and artificial gas in pipe lines will be sought at once by the organization after a decision reached on March 1st by its officers and executives at another meeting in Pittsburgh.

Three cities, Butler, New Castle, and Washington have already pledged $1,000 to the campaign chest of the new organization, which on March 1st adopted the name of Utilities League for Municipalities.

South Carolina

State Plans Electrical Distribution

SUGGESTING that action be taken for making an application to the Reconstruction Finance Corporation for a loan of not more than $100,000 for the construction of rural electric lines, Governor Blackwood transmitted to the legislature the report of a special committee which made a survey of rural electrification. He also recommended enactment of a bill (H. 372) which already has been passed by the house, to establish a system of electrical distribution for rural purposes.

The committee recommended construction of at least 100 miles of distribution lines along segments of highways in various sections of the state for the purposes of practical demonstration. The committee contended that the primary object of these demonstration lines would be to show the practicability of combining electrical service to the farmers and other rural residents living along such highways with electrical signal services upon such highways for the regulation of and safety to vehicular traffic.

Texas

Legislature Considers Bills for Utility Regulation

AN Austin dispatch of March 1st to the *United States Daily* states that a bill (H. 84) to prohibit gas, electric, and other public utilities from engaging in the business of merchandising appliances has been reported favorably to the house by the committee on municipal and private corporations. The measure follows the terms of a district court decision, now on appeal, declaring such merchandising beyond the corporate powers of utilities.

Another measure (H. 337) prohibiting the reduction of public utility rates for the purpose of eliminating competition has been reported favorably to the house, and both bills have reached the house calendar for action thereon.

An Austin dispatch of February 28th to the Dallas *News* states that three utility regulation bills were given a favorable report during the last week of February by the house committee on municipal and private corporations. A general utility regulatory bill was prepared by a subcommittee and adopted as a substitute for the three bills reported. These three measures were: By Paul Hill, providing for a utilities commission; by Otis T. Dunagan and Traylor Russell, placing regulation and control of electric light and power, telephone, and telegraph companies under the railroad commission; and a bill by S. D. Shannon and J. C. Duvall, vesting control of telephone utilities in the railroad commission.

Virginia

Commission Proceeds with Power Rate Investigation

GOVERNOR Pollard's decision to finance the state corporation commission's electric power rate investigation entirely from public funds was reached after the commission had appealed to him for sufficient money to make the inquiry without the aid of the companies involved. Under the original plan, the commission had less than $15,000 available for the $50,000 undertaking and, therefore, called upon the three power companies to be investigated to contribute the larger portion of the costs. Following the request of the commission, however, the governor decided that funds necessary for the investigation of power rates in Virginia will be made available by the state, and the three electric power companies involved in the inquiry will be relieved of all financial obligation, according to a report in the Richmond *Times-Dispatch*.

Revaluation of the properties of the three companies may not be necessary in the state commission's inquiry, it was developed at a conference in Wheeling on February 20th between Allen J. Saville, conducting the inquiry, and representatives of the three companies. Assurances were given by J. G. Holtzclaw, president of the Virginia Electric and Power Company, and concurred in by Floyd W. King of the Virginia Public Service Company, and J. G. Hancock and Bryant White, of the Appalachian Electric and Power Company, that facts about income, operating expenses, and important valuation data will be supplied to the state's consultant. Mr. Saville stated that this coöperation should speed the inquiry and result in the filing of his report to the commission in considerably less time than the anticipated period of twelve months, according to a news item in the Wheeling (W. Va.) *Intelligencer*.

Wisconsin

Emergency Rate Reductions Are Approved

DURING the present economic crisis the Wisconsin commission has approved many reduced rate schedules proposed by various utilities under its control, and from time to time extensions of the approval orders have been made. The commission usually provides that the reduction shall be temporary and that the utility will later be permitted to reinstate the schedule in effect prior to the emergency reduction period unless the order is previously altered or amended by the commission.

The commission has adopted the practice of retaining jurisdiction to make further adjustments and it is usually provided that reports be furnished to the commission at regular intervals. The utilities are also required to furnish their customers with schedules of the rates which are to be effective during the emergency period.

Wyoming

Commission Conducts Gas Rate Conference

IN an effort to iron out existing gas rate difficulties at Casper, informal conferences were to be held between the state public service commission members, Casper city officials and spokesmen for the New York Oil Company, according to a statement by C. H. McWhinnie, chairman of the state commission, in the Cheyenne *Tribune-Leader*. Governor Miller recently directed the commission to conduct an exhaustive survey in Casper as a result of dissatisfaction expressed by patrons of the New York Company on existing rates.

The utility company had asked and was granted additional time in which to confer with its eastern office in an effort to determine a basis upon which a settlement might be made. Chairman McWhinnie said also numerous other inquiries might be held at a later date by the state public service commission relative to public utilities rates in Wyoming.

The Latest Utility Rulings

Value of Service as Measure of Rate Reasonableness

WHEN the Wisconsin commission handed down its noteworthy decision last summer in *Re* Wisconsin Telephone Co. 2–U–35, P.U.R.1932D, 173, it attracted considerable attention because of its apparent consideration of the heretofore rather indefinable "value of service" as a contributing factor in fixing telephone rates. Now comes a decision in which the commission quite definitely adopts the value-of-service basis for fixing rates without regard to the value of the properties involved. The case arose on complaint of fifty-odd subscribers against alleged excessive rates (varying from $2 to $2.50 per month) charged for rural service by the Commonwealth Telephone Company from its Hartford exchange. The commission's opinion stated:

> "Without accurate estimates of the cost of service in this instance, our findings must rest on other considerations. In 2–U–35 (P.U.R.1932D, 173), *Re* Wisconsin Telephone Company, we stated that the value of the service was one of the elements to be considered in determining reasonable rates. The complainants stressed this point and from our examination of all the circumstances we have concluded for reasons outlined below that the value of the service is more relevant and entitled to more weight in this instance than an allocated cost of service estimate.
>
> ". . . Our inquiry in this case has disclosed several factors bearing upon the value of service. In 2–U–35, we alluded to the loss of subscribers as one indication of a decline in the value of service. In this case the loss of subscribers has approached 'strike' proportions. At the time the present rates were authorized, there were seventy subscribers; at the peak, there were almost ninety; now there appear to be less than thirty-five. It appears obvious that the value of the service to most of those who have disconnected was less than the rates charged. To those who have retained their telephones, the opportunity of communicating with neighbors is clearly much restricted and to that extent the value of their telephone service for most purposes has lessened."

After reviewing the unsatisfactory condition of the property and the poor standard of service rendered, the opinion concluded:

> "In view of the substantial proportion of fixed costs in this case, probably in excess of $600 according to information submitted by the company, we believe it is of paramount importance that the number of subscribers be maintained at a maximum. It appears that the company may have more revenue to meet its fixed costs if it reduces rates, and stops subscriber loss and perhaps regains some former customers, than if the present rates are continued and further losses occur. Some of the complainants testified that a rate of $18 a year, or $1.50 a month, for residential service would enable many to continue or restore their patronage. This is the rate prevailing before the last rate increase. We see no good reason why this rate should not be tried. In view of the uncertain results of such a rate, we believe it should be made temporary, in accordance with § 196.395 of the statutes."

Russell et al. v. Commonwealth Telephone Co. (2–U–324.)

Injunction Protecting Utility Monopoly Dissolved

FOR a number of years Fairbanks, Morse & Company has been known throughout the United States as manufacturers of electric plant equipment, specializing in smaller units. With the growth of rural electrification and the

agitation against privately owned electrical service, this company has engaged in a systematic business of selling municipalities the idea of establishing their own plants. Frequently the company was confronted with the obstacle of municipal debt limitation and the difficulty of persuading municipal voters to increase their own tax assessments to raise sufficient money to lay out for municipal plant equipment. The company endeavored in some instances to get around this obstacle by offering conditional sales contracts by which the title to the plant would remain in the company until paid for out of profits of its operation. This type of contract has received considerable court attention and has naturally brought the company into conflict with privately owned electric utilities operating in the municipalities with which the manufacturing company wants to do business.

Such was the situation in the two Texas towns of Seymour and Commerce both served by the Texas Electric Service Company. As the results of the manufacturing company's attempts in these two towns to institute effective municipal competition, the private utility succeeded in obtaining from a Federal district court (32 Fed. (2d) 696) an omnibus injunction as to 65 communities in Texas which the utility serves, which would restrain the manufacturing company from inducing these towns or causing others to induce these towns to breach contracts for service which the private utility claimed to have. From this omnibus injunction the company has recently successfully appealed.

The circuit court of appeals pointed out that without any proof as to the manufacturing company's acts as to any specific community or as to the contract which the utility might have had with them, the manufacturing company has been generally restrained throughout the whole state of Texas. Because of this lack of evidence to support it, the appellate court held that the lower court's decree could not stand. The opinion also stated a more fundamental reason—namely, that the injunction would have the effect of giving to the private electrical utility a monopoly which the private utility could not under the laws of Texas have. The court observed that the only thing the manufacturing company was attempting to do was to sell and install light and power plants in municipalities—undoubtedly legitimate business. In conducting such business, it was also held to be proper for the manufacturing company to canvass various citizens of the town, including customers of the private utility company, in an effort to enlist support for municipal plant projects. The court held that any injunction that would restrain such canvassing or solicitation of business would have the effect of giving the private utility an exclusive and monopolistic franchise in direct violation of the public policies and statutes of the state of Texas. *Fairbanks, Morse & Co. v. Texas Electric Service Co.*

Defective Petition Voids Commission Order

THE supreme court of Illinois has sustained an appeal from an order of the commerce commission of that state approving of the issuance of a first mortgage on a telephone utility's property because the petition for such approval was not verified as required by statute (Smith's Stat. 1931, p. 2256). The court held that the unverified petition accordingly was not sufficient to give the commission jurisdiction over the subject matter of such petition. The counsel representing the commission argued that parties taking the appeal had by their appearance in court waived jurisdictional objection. The court distinguished, however, between jurisdiction of persons and jurisdiction

of subject matter. It was pointed out that by appearance in court the appellant had waived the right to object to the jurisdiction of the court over their persons, but that jurisdiction of subject matter cannot be conferred by waiver of the parties to the proceeding. The cause was remanded to the commerce commission with instructions to dismiss the petition for lack of jurisdiction. *Lambdin et al. v. Illinois Commerce Commission.*

Colorado Supreme Court Rules on Motor Carriers

REVERBERATIONS are beginning to be felt in the supreme court as a result of the landmark decision of the United States Supreme Court, handed down last December in Stephenson *v.* Binford. The Montana Supreme Court has already modified its former position with respect to the validity of private motor-carrier regulations, and it is expected that other state courts will modify or clarify their positions with respect to such legislation within the next few months. The latest state tribunal to give attention to the matter is the supreme court of Colorado which has just handed down a series of three cases involving motor-carrier regulation.

In the first case, one Bushnell was charged with violating Chap. 120, Session Laws of 1931, by operating as a private motor carrier without obtaining a certificate of convenience and necessity required by such statute. He was found guilty and fined. On appeal his lawyer argued that the regulatory statute unconstitutionally denied to Bushnell the right of operating as a private carrier, compelling him in fact to operate as a common carrier. The denial of this right, it was contended, was a denial of due process of law.

The supreme court affirmed the lower court's conviction on the authority of Stephenson *v.* Binford. The court pointed out that the Colorado statute did not attempt to force private carriers into the same classification as common carriers, but simply purports to regulate all carriers operating for hire, with the exception of certain exemptions in favor of the hauling of agricultural produce. It was specifically observed that Chap. 120 expressly provided that nothing therein contained should "be construed or applied so as to compel a private carrier by motor vehicle to be or become a common carrier." The court concluded that the law was in all respects constitutional.

The second case involved one Montgomery who was accused of hauling at a profit his own coal over the public highways from the place where he bought it to the place where he sold it without securing a permit as a private carrier, as alleged to be required by Chap. 120, Session Laws of 1931, with particular regard to sub-section (h) of § 1. The court held in this case that a lower court judgment dismissing the case should be affirmed because the section of the statute complained of was unconstitutional by reason of defective title. The court explained that it would be unreasonable for one to expect from reading the title of the act that it would contain a regulation of one who hauls his own property in his own vehicle for a profit, just as other types of transportation are regulated. Since the title of the act appeared not to be broad enough to include this special type of transportation, the court concluded that the section of the statute complained of was unconstitutional, and since the statute was severable, the remaining sections or portions of the statute were left undisturbed.

The third case had to do with the alleged unlawful operations of a motor carrier as a common carrier. The case was instituted by a duly authorized common carrier to prevent the alleged unlawful operations, without a certifi-

cate of convenience and necessity, of one McDill. McDill was in fact authorized to operate as a private carrier. The lower court found that McDill was operating as a common carrier and issued a restraining order against his further activities. The supreme court held that since McDill did not indiscriminately solicit business or hold himself out to transport for hire without restriction, but evidence indicated that he was engaged in the transportation of freight under contract with private individuals, the injunction should be dissolved so far as it affected his operations as a common carrier. *Bushnell v. People; People v. Montgomery; McDill v. North Eastern Motor Freight, Inc.*

Economic Depression Cause of Grade Separation Holiday

ALTHOUGH as a strict matter of law the financial condition of railroads and municipalities does not control their responsibility to the state with respect to their obligations to participate in the removal of treacherous and dangerous grade crossings, there is increasing evidence that prevailing adverse economic conditions are being considered by the state commission in disposing for the present, at least, of such proceedings. A typical case in point was the recent decision of the Pennsylvania commission to dismiss a complaint brought by the Lehigh Valley Motor Club against certain railroads and municipalities for the separation of grades of the highway and railroad tracks, respectively, in Lehigh township, Northampton county. The proposed elimination project was estimated to cost approximately $300,000. The commission stated:

> "In view of the fact that the cost of the abolitions here involved would be so great as to place an unwarranted financial burden under present economic conditions upon both the utilities and the municipalities, and of the further fact that the latter are now obliged to carry an increasingly heavy burden of relief due to unemployment, the abolitions will not be ordered at this time. The complaint will be dismissed without prejudice to the filing of a new complaint when conditions would seem to justify an undertaking of the character here involved."

Lehigh Valley Motor Club v. Central Railroad Co. et al. (*Complaint Docket No. 8587.*)

Demand Meter Not Required for Fluctuating Power Demand

WHILE some commissions, including the New York commission, are commencing to frown upon optional rates for a utility service, the Pennsylvania commission continues to rule on that subject consistently with the principle first announced in Spear & Company *v.* Duquesne Light Company (P.U.R.1931D, 387) to the effect that it is not unreasonably discriminatory to place the obligation on the consumer to select the optional rate best adapted for his own operations.

The most recent phase of this controversy was reflected in the commission's dismissal of a complaint by a consumer of the Philadelphia Electric Company for recovery of alleged overcharges resulting from the failure of the company to install a demand meter for measuring power consumption. The complainant in March, 1930, requested the application of the utility's "Rate D" for wholesale power service. This "Rate D" provided that, for installations of 40 kilowatts or less, the maximum billing demand shall be assessed according to the stated provisions of the